ALTMAN NEWMAN CO. LPA

Protecting Human Health & The Environment

FREEDOM OF INFORMATION ACT REQUEST

November 18, 2021

U.S. Environmental Protection Agency, Region 5
ATTN: Regional Freedom of Information Officer
77 West Jackson Blvd (MI-10J)
Chicago, IL 60604

Sent online via FOIAonline.gov

Re: FOIA Request for Industry's Request to Remove the Ohio Air Nuisance Rule from the Ohio State Implementation Plan

To Whom It May Concern,

On behalf of Marilyn Wall and Donna Ballinger and pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, our firm requests records regarding Perkins Coie's request to the Environmental Protection Agency's ("EPA") Region 5 to remove the Ohio Air Nuisance Rule ("ANR") from the Ohio Clean Air Act State Implementation Plan ("SIP") and meetings between Perkins Coie and EPA regarding the same. Our firm recently obtained two letters sent by LeAnn M. Johnson Koch to EPA Region 5 regarding her firm's request to remove the ANR from Ohio's SIP. The June 11, 2019 letter is attached to this request as Attachment A and the October 18, 2019 letter is attached as Attachment B.[1]

This FOIA request covers records from May 1, 2019 through the date of the search and specifically seeks the following records:

1. All records of notes taken during meetings and phone calls between Perkins Coie and EPA Region 5 regarding the request for removal of the ANR, including during the October 1, 2019 meeting referenced in Attachment B;

[1] The letters were made publicly available as part of the administrative record in the Sixth Circuit Court of Appeals in litigation challenging EPA's removal of the ANR from the Ohio SIP, see 85 Fed. Reg. 73,636 (Nov. 19, 2020). To our knowledge, prior to EPA filing its certified list of administrative record documents with the Sixth Circuit on November 17, 2021, the letters had not been made publicly available – including during EPA's rulemaking to remove the ANR from the Ohio SIP.

2. All records of communications between EPA, Perkins Coie, and/or other parties (including but not limited to persons or entities represented by Perkins Coie on the ANR removal request, other industry parties, or staff from the Ohio Environmental Protection Agency) regarding the request to remove the ANR and the letters attached hereto; and

3. All records of internal EPA communications regarding the request to remove the ANR and the letters attached hereto.

In performing a search for records responsive to this request, we request that searches be conducted at a minimum of records from the following custodians: Cathy Stepp, Pamela Blakely, John Mooney, Leverett Nelson, Cheryl Newton, Curt Thiede, and any other EPA Region 5 staff who participated in meetings or communications with Perkins Coie or any other parties concerning the ANR removal request.

The term "records" should be construed in the broadest possible interpretation of the term, including, but not limited to draft documents, meeting minutes, email communications (both internal and external communications), letters, faxes, photos, memos, and contracts, as well as any information recorded in an electronic format such as data files, emails, or digital photos.

I request that the copies be sent electronically to tcmar@environlaw.com and jnewman@environlaw.com. If some records become available sooner than others, please deliver them on a rolling basis as they become ready rather than waiting for all records to become available. If you believe any of the above requests are ambiguous, overly broad, or insufficiently specific for you to identify the records requested, please promptly email me at the same email or call me at 513-721-2180 ext. 103 so we can attempt to resolve any issues.

If any records are withheld or redacted, please make clear the explanation, including the legal authority that is being asserted for each. In particular, if any records are claimed to be withheld or redacted pursuant to an exemption listed in FOIA, please identify the specific exemption being used. Also, please provide those portions of records with information requested that are not specifically exempted from disclosure. If you expect a significant delay in fulfilling this request, please contact me with information about when I might expect copies of the requested records.

Ms. Wall and Ms. Ballinger request a fee waiver for this FOIA request. This request seeks records regarding the EPA's operations and activities regarding the removal of the ANR and will significantly contribute to the public's understanding of the same. The EPA's removal of the ANR has sparked public interest, as evidenced by media reports on the issue.[2] Importantly, Ms. Wall and Ms. Ballinger intend to publicly disseminate the records received pursuant to this

[2] *See* https://www.wcpo.com/news/local-news/i-team/proposed-epa-rule-change-would-make-life-easier-for-ohio-polluters (last accessed Nov. 18, 2021);

request to further inform the public about the EPA's actions in removing the critical ANR from the Ohio SIP. Ms. Wall and Ms. Ballinger have no commercial interest in these records and request these records solely to ensure the public has a better understanding of the EPA's operations and activities regarding the removal of the ANR from the Ohio SIP.

Thank you for your prompt attention to this request.

Sincerely,

Thomas Cmar
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ATTACHMENT A

PERKINSCOIE

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June 11, 2019

VIA CERTIFIED AND ELECTRONIC MAIL

Cathy Stepp
Regional Administrator
Environmental Protection Agency, Region 5
Air and Radiation Division
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: Request to Remove the Public Nuisance Provision from the Ohio State Implementation Plan

Dear Ms. Stepp:

I am writing to request that EPA correct an error in Ohio's State Implementation Plan ("SIP"), specifically, the inclusion of a public nuisance provision, OAC-3745-15-07, which is unrelated to Ohio's control strategy for the attainment and maintenance of the National Ambient Air Quality Standards ("NAAQS").[1] EPA has clear authority under Clean Air Act Section 110(k)(6) to make corrections to SIPs by removing provisions not sufficiently related to maintenance or attainment of the NAAQS and has done so numerous times with provisions similar to the Ohio public nuisance provision as described below.

I. EPA has clear authority to remove the general nuisance provision from the SIP.

Under section 110(k)(6) of the CAA, EPA has authority to revise a SIP whenever the agency determines that the "action approving, disapproving, or promulgating any plan or plan revision (or part thereof) . . . was in error." Once EPA has determined there is an error, "the Administrator may . . . revise such action as appropriate *without requiring any further submission from the State*."[2] EPA interprets this provision "to authorize EPA to correct a promulgated regulation when:

> (1) "EPA *clearly erred by failing to consider or by inappropriately considering information* made available to the EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and

[1] *See* OAC-3745-15-07 at Attachment 1.

[2] 42 U.S.C. § 7410(k)(6) (emphasis added) (Attachment 2).

(2) "[O]ther information persuasively supports a change in the regulation."[3]

EPA has used its § 110(k)(6) authority many times to remove public nuisance provisions similar to the Ohio public nuisance provision and has clear authority to do so.

II. It is EPA's longstanding policy and practice to remove general nuisance provisions from SIPs.

Since at least 1979, EPA has interpreted the CAA as prohibiting the inclusion in SIPs of state rules that are unrelated to the attainment or maintenance of the NAAQS.[4] In a 1979 memorandum, the EPA Office of General Counsel stated that "OGC has always advised the Regions that *measures to control non-criteria pollutants may not legally be made part of a SIP*. Section 110 of the Clean Air Act makes clear that the SIPs have this limitation."[5] EPA has consistently reinforced this interpretation by removing general nuisance provisions from SIPs.

The CAA was first amended in 1970. As part of the amendment, states were required to develop SIPs to reduce air pollution in areas not meeting the NAAQS. In response to the amendment, thousands of state and local agency regulations were submitted to EPA for incorporation into SIPs in the 1970s and early 1980s.[6] Many states and districts submitted their entire programs, "including many elements not required pursuant to the Act."[7] Due to resource constraints, EPA conducted focused reviews of the submissions, paying attention to "the required technical, legal, and enforcement elements" and conducting only "minimal review" of the other elements.[8]

EPA has since recognized that many of the provisions initially approved in SIPs "were not appropriate for approval," including provisions "that prohibit emissions causing general nuisance or annoyance in the community."[9] As a result, EPA has removed general nuisance

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[3] Designation of Areas for Air Quality Planning Purposes; California; Morongo Band of Mission Indians, 78 Fed. Reg. 51, 53 (Jan. 2, 2013) (emphasis added).
[4] Memorandum from Michael James, Associate General Counsel of EPA's Air, Noise, and Radiation Division to Regional Counsel and Air Branch Chief regarding "Status of State/Local Air Pollution Control Measures not related to NAAQS," February 9, 1979 (Attachment 3).
[5] *Id.*
[6] Air Plan Revisions; California; Technical Amendments, 83 Fed. Reg. 43576, 43576 (Aug. 27, 2018) (Attachment 4).
[7] Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Wyoming; Corrections, 61 Fed. Reg. 47058, 47058 (Sept. 6, 1996) (Attachment 5).
[8] *Id.*; 83 Fed. Reg. at 43576.
[9] 83 Fed. Reg. at 43576.

provisions, including odor control provisions, from SIPs because they do "not have a reasonable connection to the NAAQS and related air quality goals of the Clean Air Act."[10]

In 1999, for example, EPA removed "a general prohibition against air pollution" from the New York SIP.[11] EPA determined that "[s]uch a general provision is not designed to control NAAQS pollutants such that EPA could rely on it as a NAAQS attainment and maintenance strategy."[12] Using almost identical language, EPA removed a nuisance provision from the Georgia SIP, because it was "not related to the attainment and maintenance of the [NAAQS]."[13] EPA did the same in Michigan by removing from the SIP "a general rule that prohibits the emission of an air contaminant which is injurious to human health or safety, animal life, plant life of significant economic value, property, or which causes unreasonable interference with the comfortable enjoyment of life and property."[14] The rule had primarily been used to address odors and other local nuisances and not to attain or maintain the NAAQS.[15] Similarly, in a direct final rule published in 1996, EPA removed odor control rules from the Wyoming SIP, because they had been "erroneously incorporated into the SIP" and "[did] not have a reasonable connection" to the NAAQs.[16] EPA has also stricken odor regulations from the Minnesota and Puerto Rico SIPs[17] and has declined to incorporate odor provisions into the Montana and Washington SIPs as part of larger SIP submissions.[18]

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[10] Approval and Promulgation of Implementation Plans; New York, 63 Fed. Reg. 65557, 65557 (Nov. 27, 1998) (Attachment 6).

[11] *Id.* On November 27, 1998, EPA published notice of the direct final rulemaking to remove the nuisance provision from the SIP. The notice took effect on January 26, 1999, after a 60-day public comment period during which EPA received no comments on the rule.

[12] *Id.*

[13] Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the State Implementation Plan, 71 Fed. Reg. 13551 (March 16, 2006) (Attachment 7).

[14] Approval and Promulgation of Implementation Plans; Michigan Correction, 64 Fed. Reg. 7790, 7791 (February 17, 1999) (Attachment 8).

[15] *Id.*

[16] 61 Fed. Reg. at 47058.

[17] Approval and Promulgation of Implementation Plans; Minnesota, 60 Fed. Reg. 27411 (May 24, 1995) (Attachment 9); Approval and Promulgation of Implementation Plans; Commonwealth of Puerto Rico, 62 Fed. Reg. 3211 (January 22, 1997) (removing Rule 420 from the Puerto Rico SIP, which is an odor provision) (Attachment 10).

[18] Clean Air Act Approval and Promulgation of PM_{10} Implementation Plan for Montana, 59 Fed. Reg. 2537, 2539 (January 18, 1994) (Attachment 11); Approval and Promulgation of Implementation Plans: Washington, 59 Fed. Reg. 44324, 44326 (August 29, 1994) (Attachment 12).

Last year, EPA approved proposed SIP revisions submitted by New Hampshire, which included the removal of two references to "nuisance" in the New Hampshire SIP.[19] EPA found that "the term 'nuisance' in Env-A 1000, as defined in state law, is a broad concept that could be applied to prohibit impacts that bear no reasonable connection to the NAAQS."[20] Also in 2018, EPA proposed the removal of a "general-nuisance type" rule from the California SIP.[21] This year, EPA removed the definition of "nuisance" from the Oregon SIP because, as EPA noted in its notice of proposed rulemaking, the definition of "nuisance" is "not appropriate for SIP approval" and is not "related to attainment and maintenance of the NAAQS and carrying out other specific requirements of section 110 of the CAA."[22]

III. The public nuisance provision in the Ohio SIP is not related to the attainment of NAAQs and should not be removed from the Ohio SIP

Like the examples above, the Ohio public nuisance provision was approved into the SIP when EPA had limited resources and, as a result, approved provisions into SIPs that had no connection to the NAAQS. The Ohio public nuisance provision was initially promulgated as regulation AP-2-07, now OAC-3745-15-07, by the Ohio Air Pollution Control Board (predecessor to Ohio EPA) and was approved as part of the Ohio SIP on April 15, 1974.[23]

As EPA explained in past rulemakings, state and local agencies can choose whether to adopt and enforce these nuisance provisions, but it would be inappropriate to make them federally enforceable.[24] General nuisance provisions have "essentially no connection to the purposes for which SIPs are developed and approved, namely the implementation, maintenance, and enforcement of the [NAAQs]."[25] The public nuisance provision in the Ohio SIP is no different. OAC 3745-15-07 reads as follows:

> (A) The emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause

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[19] *See* Air Plan Approval; New Hampshire; Rules for Open Burning and Incinerators, 83 Fed. Reg. 6972 (February 16, 2018) (Attachment 13).
[20] *Id.* at 6974.
[21] *See* 83 Fed. Reg. 43576.
[22] *See* Air Plan Approval; OR: Lane County Outdoor Burning and Enforcement Procedure Rules, 83 Fed. Reg. 60386, 60388 (proposed rule) (November 26, 2018) (Attachment 14); *see also* 84 Fed. Reg. 5000 (final rule) (February 20, 2019) (Attachment 15).
[23] *See* Approval and Promulgation of Implementation Plans, 39 Fed. Reg. 13539 (April 15, 1974) (Attachment 16).
[24] *See, e.g.*, 83 Fed. Reg. 43576.
[25] *Id.*

> unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.
>
> (B) The emission or escape into the open air from any source or sources of odors whatsoever that is subject to regulation under Chapter 3745-17, 3745-18, 3745-21, or 3745-31 of the Administrative Code and is operated in such a manner to emit such amounts of odor as to endanger the health, safety, or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.

The Ohio public nuisance provision covers a broad range of activity, prohibiting the discharge from *any* source of *any* substance or odor that will harm the public or property. Like the provisions EPA has already removed from other SIPs, this provision is a general prohibition against public nuisances.[26] For example, the nuisance provision removed from the New York SIP (discussed above) provided that "no person shall cause or allow any air contamination source to emit any material having an opacity equal to or greater than 20 percent."[27] EPA determined that this was simply "a general prohibition against air pollution" that was "not designed to control NAAQS pollutants such that EPA could rely on it as a NAAQS attainment and maintenance strategy."[28] Similarly, the Ohio provision is a general prohibition against creating a public nuisance. Broadly-defined air pollution "does not necessarily equate to a condition that would interfere with attainment or maintenance of the NAAQS."[29]

EPA has even given an example of a nuisance provision that would not be appropriate for inclusion in a SIP:

> "A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property."[30]

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[26] The general nuisance provision is even couched, aptly, in the "General Provisions on Air Pollution Control" section of the Ohio SIP.
[27] 6 NY-CRR 211.2.
[28] 63 Fed. Reg. at 65557.
[29] 83 Fed. Reg. at 6974.
[30] 83 Fed. Reg. at 43576 n.1.

The Ohio provision is almost identical to EPA's hypothetical provision and is no more related to attainment and maintenance of the NAAQS than EPA's example or the general nuisance provisions that EPA has already removed from other SIPs. Thus, EPA should remove the public nuisance provision from the Ohio SIP.

We appreciate your consideration of our request and look forward to hearing back from you.

Very truly yours,

LeAnn Johnson Koch

cc (via electronic mail):
Laurie Stevenson, Director, Ohio EPA
Todd Anderson, Deputy Director of Legal, Ohio EPA
Michael Guastella, Deputy Director, Government and Business Relations, Ohio EPA
Robert Hodanbosi, Chief, Division of Air Pollution Control, Ohio EPA
Drew Bergman, Esq., Assistant Chief Counsel, Ohio EPA
Pamela Blakely, Chief Permits and Grants Section, EPA Region 5

Attachment 1

OAC-3745-15-07 Air pollution nuisances prohibited.

(A) The emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.

(B) The emission or escape into the open air from any source or sources of odors whatsoever that is subject to regulation under Chapter 3745-17, 3745-18, 3745-21, or 3745-31 of the Administrative Code and is operated in such a manner to emit such amounts of odor as to endanger the health, safety, or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.

Attachment 2

Clean Air Act § 110(k)(6)

(6) Corrections

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Attachment 3

02/09/1979 VOC570209791

Category: 57 – Exemptions/Applicability

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
February 9, 1979

Office of
General Counsel

MEMORANDUM

SUBJECT: Status of State/Local Air Pollution Control Measures Not Related to NAAQS

FROM: Michael A. James, Associate General Counsel
Air, Noise and Radiation Division (A-133)

TO: Regional Counsels
Regional Air Branch Chiefs

I want to bring to your attention an issue that I neglected asking Jeff Corer and Larry Novey to mention at the Air Branch Chiefs' Meeting in Atlanta last week. That issue is the status on the SIP of State or local air pollution control measures that are not designed to control national ambient air quality standard (criteria) pollutants or their precursors.

OGC has always advised the Regions that measures to control non-criteria pollutants may not legally be made part of a SIP. Section 110 of the Clean Air Act makes clear that the SIPs have this limitation.[1] This limited scope seems to be pretty well understood and only rarely does a Regional Office include a non-criteria pollutant measure in a SIP approval proposal.

I mention this now because as States submit their major SIP revisions to meet the new requirements of Part D and other provisions of the 1977 Amendments, they may not always differentiate between their regulations to control criteria pollutants and their air pollution control regulations in general. The Regional Office should differentiate if the State does not. The usual practice is that the Region notes in the proposed approval/disapproval preamble that EPA is not taking any action on an identified non-criteria pollutant measure because it cannot legally be part of the SIP.

Regulations for controlling odors, fluorides,[2] and arsenic are some of the non-criteria pollutant measures that have been included in State submissions for EPA approval. Visible emissions regulations are, to my knowledge, always considered SIP measures and are required for many source

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[1] Measures that are not part of the approved SIP may not be enforced by EPA.

[2] State fluoride regulations covering certain source categories are subject to EPA approval under S 111(d), but not as parts of SIPs.

categories by 40 CFR 51.19©). If you have any questions about whether a particular emission limitation may be included in the SIP, please contact OAQPS staff on technical issues, and my staff on legal questions.

cc: Dick Rhoads
Steve Kuhrtz

Attachment 4

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve Maryland's 2017 progress report does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 15, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2018–18526 Filed 8–24–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0133; FRL–9982–76—Region 9]

Air Plan Revisions; California; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to delete various local rules from the California State Implementation Plan (SIP) that were approved in error. These rules include general nuisance provisions, certain federal performance requirements, hearing board procedures, variance provisions, and local fee provisions. The EPA has determined that the continued presence of these rules in the SIP is potentially confusing and thus problematic for affected sources, the state, local agencies, and the EPA. The intended effect of this proposal is to delete these rules to make the SIP consistent with the Clean Air Act. The EPA is also proposing to make certain other corrections to address errors made in previous actions taken by the EPA on California SIP revisions.

DATES: Any comments must arrive by September 26, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0133 at *http://www.regulations.gov,* or via email to Kevin Gong, at *gong.kevin@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, (415) 972–3073, *gong.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Why is the EPA proposing to correct the SIP?

The Clean Air Act (CAA or ''Act'') was first enacted in 1970. In the 1970s and early 1980s, thousands of state and local agency regulations were submitted to the EPA for incorporation into the SIP to fulfill the new federal requirements. In many cases, states submitted entire regulatory air pollution programs, including many elements not required by the Act. Due to time and resource constraints, the EPA's review of these submittals focused primarily on the new substantive requirements, and we approved many other elements into the SIP with minimal review. We now recognize that many of these elements were not appropriate for approval into the SIP. In general, these elements are appropriate for state and local agencies to adopt and implement, but it is not necessary or appropriate to make them federally enforceable by incorporating them into the applicable SIP. These include:

A. Rules that prohibit emissions causing general nuisance or annoyance in the community.[1] Such rules address local issues but have essentially no connection to the purposes for which SIPs are developed and approved, namely the implementation, maintenance, and enforcement of the

[1] An example of such a rule is as follows: A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property.

national ambient air quality standards (NAAQS). *See* CAA section 110(a)(1).

B. Local adoption of federal New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements either by reference or by adopting text identical or modified from the requirements found in 40 Code of Federal Regulations (CFR) part 60 or 61. Because the EPA has independent authority to implement 40 CFR parts 60 and 61, it is not appropriate to make parallel local authorities federally enforceable by approving them into the applicable SIP.

C. Rules that govern local hearing board procedures and other administrative requirements such as fees, frequency of meetings, salaries paid to board members, and procedures for petitioning for a local hearing.

D. Variance provisions that provide for modification of the requirements of the applicable SIP. State- or district-issued variances provide an applicant with a mechanism to obtain relief from state enforcement of a state or local rule under certain conditions. Pursuant to federal law, specifically section 110(i) of the CAA, 42 U.S.C. 7410(i), neither the EPA nor a state may revise a SIP by issuing an ''order, suspension, plan revision or other action modifying any requirement of an applicable implementation plan'' without a plan promulgation or revision. The EPA and California have long recognized that a state-issued variance, though binding as a matter of state law, does not prevent the EPA from enforcing the underlying SIP provisions unless and until the EPA approves that variance as a SIP revision. The variance provisions included in this action are deficient for various reasons, including their failure to address the fact that a state- or district-issued variance has no effect on federal enforceability unless the variance is submitted to and approved by the EPA as a SIP revision. Therefore, their inclusion in the SIP is inconsistent with the Act and may be confusing to regulated industry and the general public. Moreover, because state-issued variances require independent EPA approval to modify the substantive requirements of a SIP, removal of these variance provisions from the SIP will have no effect on regulated entities. *See Industrial Environmental Association* v. *Browner,* No. 97–71117 (9th Cir., May 26, 2000).

E. Local fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit. While it is appropriate for local agencies to implement fee provisions, for example, to recover costs for issuing permits, it is generally not appropriate to make local fee collection federally enforceable.

II. What is the EPA's authority to correct errors in SIP rulemakings?

Section 110(k)(6) of the CAA, as amended in 1990, provides that, whenever the EPA determines that the EPA's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the state. Such determination and the basis thereof must be provided to the state and the public. We interpret this provision to authorize the EPA to make corrections to a promulgated regulation when it is shown to our satisfaction (or we discover) that (1) we clearly erred by failing to consider or by inappropriately considering information made available to the EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. *See* 57 FR 56762, at 56763 (November 30, 1992) (correcting designations, boundaries, and classifications of ozone, carbon monoxide, particulate matter and lead areas).

III. Which rules are proposed for deletion?

The EPA has determined that the rules listed in Table 1 below are inappropriate for inclusion in the SIP, but were previously approved into the SIP in error. Dates that these rules were submitted by the state and approved by the EPA are provided. We are proposing deletion of these rules and any earlier versions of these rules from the individual air pollution control district portions of the California SIP under CAA section 110(k)(6) as inconsistent with the requirements of CAA section 110. A brief discussion of the proposed deletions is provided in the following paragraphs.

TABLE 1—LOCAL AIR DISTRICT RULES PROPOSED FOR DELETION

Rule or regulation	Title	Submittal date	EPA approval
Amador County Air Pollution Control District (APCD)			
Rule 5	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Rule 6	Additional Exception	June 30, 1972	37 FR 19812 (September 22, 1972).
Antelope Valley Air Quality Management District (AQMD)			
Los Angeles County APCD Rule 51	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Bay Area AQMD			
Division 11	Hydrogen Sulfide	February 21, 1972	37 FR 10842 (May 31, 1972).
Section 11101	[establishes hydrogen sulfide limits]	November 2, 1973	42 FR 23802 (May 11, 1977); corrected at 42 FR 42219 (August 22, 1977).
Regulation 8	Emission Standards for Hazardous Pollutants.	January 10, 1975	42 FR 23802 (May 11, 1977).
Butte County AQMD			
Section 2–1	[general nuisance provision]	February 21, 1972	37 FR 10842 (May 31, 1972).
Rule 619	Effective Date of Decision	February 10, 1986	52 FR 3226 (February 3, 1987).

TABLE 1—LOCAL AIR DISTRICT RULES PROPOSED FOR DELETION—Continued

Rule or regulation	Title	Submittal date	EPA approval
Calaveras County APCD			
Rule 205	Nuisance	July 22, 1975	42 FR 23803 (May 11, 1977); corrected at 42 FR 42219 (August 22, 1977).
Rule 603	Hearing Board Fees	July 22, 1975	42 FR 23803 (May 11, 1977); corrected at 42 FR 42219 (August 22, 1977).
Colusa County APCD			
Rule 4.5	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Rule 4.6	Additional Exception	June 30, 1972	37 FR 19812 (September 22, 1972).
Eastern Kern APCD			
Kern County APCD Rule 419	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Kern County APCD Rule 420	Exception	June 30, 1972	37 FR 19812 (September 22, 1972).
El Dorado County AQMD			
Rule 52	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972).
Rule 53	Exceptions to Rule 52	February 21, 1972	37 FR 10842 (May 31, 1972).
Rule 706	Failure to Comply with Rules	May 23, 1979	46 FR 27115 (May 18, 1981).
Feather River AQMD			
Yuba County Rule 9.7	Permit Actions	March 30, 1981	47 FR 15585 (April 12, 1982).
Yuba County Rule 9.8	Variance Actions	March 30, 1981	47 FR 15585 (April 12, 1982).
Glenn County APCD			
Rule 78	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Rule 79	Exceptions	June 30, 1972	37 FR 19812 (September 22, 1972).
Great Basin Unified APCD			
Rule 402	Nuisance	April 21, 1976	42 FR 28883 (June 6, 1977).
Rule 617	Emergency Variances	December 17, 1979	46 FR 8471 (January 27, 1981).
Imperial County APCD			
Rule 117	Nuisances	February 21, 1972	37 FR 10842 (May 31, 1972).
Rule 513	Record of Proceedings	November 4, 1977	43 FR 35694 (August 11, 1978).
Lake County AQMD			
Section 1602	Petition Procedures	March 30, 1981	47 FR 15784 (April 13, 1982).
Section 1701.Q	[excess emissions estimate for variance petitions].	February 10, 1986	52 FR 3226 (February 3, 1987).
Lassen County APCD			
Rule 3:2	Permit Fees	June 30, 1972	37 FR 19812 (September 22, 1972).
Rule 3:3	Permit Fee Schedules	June 30, 1972	37 FR 19812 (September 22, 1972).
Rule 3:4	Analysis Fees	June 30, 1972	37 FR 19812 (September 22, 1972).
Rule 3:5	Technical Reports, Charges For	June 30, 1972	37 FR 19812 (September 22, 1972).
Rule 4:2	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Mariposa County APCD			
Rule 205	Nuisance	January 10, 1975	42 FR 42219 (August 22, 1977).
Mendocino County APCD			
Rule 4.A	General	February 21, 1972	37 FR 10842 (May 31, 1972).
Rule 620	Hearing Procedures	August 6, 1982	47 FR 50864 (November 10, 1982).
Modoc County APCD			
Rule 3:2	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
Rule 3:6	Additional Exception	June 30, 1972	37 FR 19812 (September 22, 1972).

TABLE 1—LOCAL AIR DISTRICT RULES PROPOSED FOR DELETION—Continued

Rule or regulation	Title	Submittal date	EPA approval
Mojave Desert AQMD			
Riverside County Rule 51	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972).
Riverside County APCD Rule 106	Record of Proceedings	February 21, 1972	37 FR 10842 (May 31, 1972).
South Coast AQMD Rule 1231	Judicial Review	January 2, 1979	45 FR 30626 (May 9, 1980).
Monterey Bay Air Resources District			
Monterey-Santa Cruz County Unified APCD Rule 402.	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972).
San Benito County APCD Rule 403	Nuisance	February 21, 1972	37 FR 10842 (May 31, 1972).
North Coast Unified AQMD			
Del Norte County APCD Regulation IV, introductory paragraph.	[untitled but represents a general nuisance type of provision].	February 21, 1972	37 FR 10842 (May 31, 1972).
Del Norte County APCD Rule 340	Technical Report Charges	November 10, 1976	43 FR 25677 (June 14, 1978).
Del Norte County APCD Rule 620	Hearing Procedures	November 10, 1976	43 FR 25677 (June 14, 1978).
Del Norte County APCD Rule 620	Hearing Procedures	August 6, 1982	47 FR 50864 (November 10, 1982).
Del Norte County APCD Rule 630	Decisions	November 10, 1976	43 FR 25677 (June 14, 1978).
Del Norte County APCD Rule 640	Record of Proceedings	November 10, 1976	43 FR 25677 (June 14, 1978).
Del Norte County APCD Rule 650	Appeal of Decision	November 10, 1976	43 FR 25677 (June 14, 1978).
Humboldt County APCD Rule 51	Prohibited Emissions	February 21, 1972	37 FR 10842 (May 31, 1972).
Trinity County APCD Regulation IV, introductory paragraph.	[untitled but represents a general nuisance type of provision].	June 30, 1972	37 FR 19812 (September 22, 1972).
Trinity County APCD Rule 56	Failure to Comply with Rules	June 30, 1972	37 FR 19812 (September 22, 1972).
Trinity County APCD Rule 62	Preliminary Matters	June 30, 1972	37 FR 19812 (September 22, 1972).
Trinity County APCD Rule 67	Lack of Permit	June 30, 1972	37 FR 19812 (September 22, 1972).
Trinity County APCD Rule 68	Issuance of Subpoenas, Subpoenas Duces Tecum.	June 30, 1972	37 FR 19812 (September 22, 1972).
Trinity County APCD Rule 620	Hearing Procedures	August 6, 1982	47 FR 50864 (November 10, 1982).
Northern Sierra AQMD			
Nevada County APCD Rule 700	Applicable Articles of the Health and Safety Code.	June 6, 1977	43 FR 41039 (September 14, 1978).
Nevada County APCD Rule 703 (paragraphs (E) and (I)).	Contents of Petitions	June 6, 1977	43 FR 41039 (September 14, 1978).
Nevada County APCD Rule 711	Evidence	April 10, 1975	43 FR 25687 (June 14, 1978).
Plumas County APCD Rule 51	Prohibited Emissions	June 30, 1972	37 FR 19812 (September 22, 1972).
Plumas County APCD Rule 516 (paragraph (C)).	Emergency Variance Provisions	June 22, 1981	47 FR 17486 (April 23, 1982).
Plumas County APCD Rule 701	General	January 10, 1975	43 FR 25680 (June 14, 1978).
Plumas County APCD Rule 702	Filing Petitions	January 10, 1975	43 FR 25680 (June 14, 1978).
Plumas County APCD Rule 703	Contents of Petitions	June 22, 1981	47 FR 17486 (April 23, 1982).
Plumas County APCD Rule 704	Petitions for Variances	January 10, 1975	43 FR 25680 (June 14, 1978).
Plumas County APCD Rule 710	Notice of Public Hearing	June 22, 1981	47 FR 17486 (April 23, 1982).
Plumas County APCD Rule 711	Evidence	January 10, 1975	43 FR 25680 (June 14, 1978).
Plumas County APCD Rule 712	Preliminary Matters	January 10, 1975	43 FR 25680 (June 14, 1978).
Plumas County APCD Rule 713	Official Notice	January 10, 1975	43 FR 25680 (June 14, 1978).
Plumas County APCD Rule 714	Continuances	January 10, 1975	43 FR 25680 (June 14, 1978).
Plumas County APCD Rule 715	Decision	January 10, 1975	43 FR 25680 (June 14, 1978).
Plumas County APCD Rule 716	Effective Date of Decision	January 10, 1975	43 FR 25680 (June 14, 1978).
Sierra County APCD Rule 516 (paragraph (C)).	Emergency Variance Provisions	June 22, 1981	47 FR 17486 (April 23, 1982).
Sierra County APCD Rule 703	Contents of Petitions	June 22, 1981	47 FR 17486 (April 23, 1982).
Sierra County APCD Rule 710	Notice of Public Hearing	June 22, 1981	47 FR 17486 (April 23, 1982).
Northern Sonoma County APCD			
52	Nuisance	June 30, 1972	37 FR 19812 (September 22, 1972).
85	Failure to Comply with Rules	June 30, 1972	37 FR 19812 (September 22, 1972).
91	Preliminary Matters	June 30, 1972	37 FR 19812 (September 22, 1972).
96	Lack of Permit	June 30, 1972	37 FR 19812 (September 22, 1972).
600	Authorization	October 16, 1985	52 FR 12522 (April 17, 1987).
610	Petition Procedure	October 16, 1985	52 FR 12522 (April 17, 1987).
620	Hearing Procedures	August 6, 1982	47 FR 50864 (November 10, 1982).

Amador County APCD

Amador County APCD Rule 5 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 5 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Amador County APCD Rule 6 (Additional Exception) provides an exception to Amador County APCD Rule 5 and should be deleted if Rule 5 is deleted. In this action, we are proposing to delete Amador County APCD Rules 5 and 6 from the Amador County portion of the California SIP.

Antelope Valley AQMD

Formed in 1997, the Antelope Valley AQMD administers air quality management programs in the Southeast Desert portion of Los Angeles County that is referred to as ''Antelope Valley.'' The Antelope Valley AQMD portion of the California SIP includes rules adopted by various air pollution control agencies that had jurisdiction over stationary sources in Antelope Valley since 1972, including the Los Angeles County APCD, the Southern California APCD, the South Coast AQMD, and the Antelope Valley AQMD. Los Angeles County APCD Rule 51 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 51 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Although Rule 51 was rescinded in the South Coast AQMD portion of Los Angeles County at 64 FR 71660 (December 22, 1999), the rescission did not apply within the Antelope Valley AQMD portion of the county because, by the time of the 1999 action, the South Coast AQMD no longer had jurisdiction within the Antelope Valley portion of Los Angeles County. In this action, we propose to delete Los Angeles County APCD Rule 51 (Nuisance) from the Antelope Valley AQMD portion of the California SIP.

Bay Area AQMD

Bay Area AQMD Division 11 (Hydrogen Sulfide) (including sections 11100, 11101, 11102, 11102.1–11102.8) was approved as part of the original SIP for the Bay Area AQMD portion of the California SIP. Section 11101, which is untitled but establishes hydrogen sulfide limits, was superseded by approval of Section 11101 at 42 FR 23802 (May 11, 1977), as corrected and recodified at 42 FR 42219 (August 22, 1977). There has never been a NAAQS for hydrogen sulfide, and thus, Bay Area AQMD Division 11 (including sections 11100, 11101, 11102, 11102.1–11102.8) does not relate to the NAAQS and was approved in error.

Bay Area AQMD Regulation 8 (Emission Standards for Hazardous Pollutants), as approved in 1977, includes certain definitions and four substantive rules: Rule 1 (NESHAPS General Provisions), Rule 2 (Emission Standard for Asbestos), Rule 3 (Emission Standard for Beryllium), and Rule 4 (Emission Standard for Beryllium Rocket Motor Firing). Bay Area AQMD Regulation 8 adopts text identical or modified from the requirements found in 40 CFR part 60 or 61, and because the EPA has independent authority to implement 40 CFR parts 60 and 61, it was not appropriate to make parallel local authorities federally enforceable by approving Regulation 8 into the Bay Area AQMD portion of the California SIP. In this action, we are proposing to delete Division 11 (including the amended version of section 11101), and Regulation 8 from the BAAQMD portion of the California SIP.

Butte County AQMD

Butte County AQMD Section 2–1 is a general-nuisance type of prohibitory rule. As such, Section 2–1 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Butte County AQMD Rule 619 (Effective Date of Decision) relates to hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Section 2–1 and Rule 619 from the Butte County AQMD portion of the California SIP.

Calaveras County APCD

Calaveras County APCD Rule 205 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 205 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Calaveras County APCD Rule 603 (Hearing Board Fees) relates to hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Rules 205 and 603 from the Calaveras County APCD portion of the California SIP.

Colusa County APCD

Colusa County APCD Rule 4.5 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 4.5 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Colusa County APCD Rule 4.6 (Additional Exception) provides an exception to Colusa County APCD Rule 4.5 and should be deleted if Rule 4.5 is deleted. In this action, we are proposing to delete Rules 4.5 and 4.6 from the Colusa County APCD portion of the California SIP.

Eastern Kern APCD

Kern County APCD Rule 419 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 419 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Kern County APCD Rule 420 (Exception) provides an exception to Kern County APCD Rule 419 and should be deleted if Rule 419 is deleted. In this action, we are proposing to delete Rules 419 and 420 from the Eastern Kern APCD portion of the California SIP.

El Dorado County AQMD

El Dorado County AQMD Rule 52 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 52 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. El Dorado County AQMD Rule 53 (Exceptions to Rule 52) provides an exception to El Dorado County AQMD Rule 52 and should be deleted if Rule 52 is deleted. El Dorado County AQMD Rule 706 (Failure to Comply with Rules) establishes certain hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Rules 52, 53, and 706 from the El Dorado County AQMD portion of the California SIP.

Feather River AQMD

Formed in 1991, the Feather River AQMD administers air quality management programs in Yuba County and Sutter County. The Feather River AQMD portion of the California SIP includes rules adopted by the predecessor agencies, the Yuba County APCD and the Sutter County APCD, to the extent that such rules have not been superseded or removed through EPA approval of rules or rescissions adopted by the Feather River AQMD. Yuba County APCD Rules 9.7 (Permit Actions) and 9.8 (Variance Actions) establish certain hearing board procedures, and as such, were inappropriate for inclusion in the SIP and were thus approved by the EPA in error. In this action, we are proposing to delete Rules 9.7 and 9.8 from the Feather River AQMD portion of the California SIP.

Glenn County APCD

Glenn County APCD Rule 78 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 78 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Glenn County APCD Rule 79

(Exceptions) provides an exception to Glenn County APCD Rule 78 and should be deleted if Rule 78 is deleted. In this action, we are proposing to delete Rules 78 and 79 from the Glenn County APCD portion of the California SIP.

Great Basin Unified APCD

Great Basin Unified APCD Rule 402 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 402 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Great Basin Unified APCD Rule 617 (Emergency Variance) allows an owner or operator of stationary sources to file a petition for an emergency variance under certain circumstances and provides for review and action on the petition by the APCO and hearing board. As described above, such provisions are inconsistent with section 110(i) of the CAA and were thus approved by the EPA in error. In this action, we are proposing to delete Rules 402 and 617 from the Great Basin Unified APCD portion of the California SIP.

Imperial County APCD

Imperial County APCD Rule 117 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 117 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Imperial County APCD Rule 513 (Record of Proceedings) establishes certain hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Rules 117 and 513 from the Imperial County APCD portion of the California SIP.

Lake County AQMD

Lake County AQMD Section 1602 (Petition Procedures) establishes certain hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. Lake County AQMD Section 1701.Q requires that petitions for variances include an excess emission estimate and supporting documentation. As described above, variance provisions are inconsistent with section 110(i) of the CAA and were thus approved by the EPA in error. In this action, we are proposing to delete Sections 1602 and 1701.Q from the Lake County AQMD portion of the California SIP.

Lassen County APCD

Lassen County APCD Rules 3:2, 3:3, 3:4, and 3:5 are local fee provisions that were not appropriate for inclusion in the SIP and thus were approved by the EPA in error. On January 18, 2002 (67 FR 2573), the EPA deleted without replacement earlier versions of these same rules that had been submitted as part of the original California SIP on February 21, 1972 and approved on May 31, 1972 (37 FR 10842), but we did not recognize at the time of our 2002 action that the subject rules had been superseded by rules submitted on June 30, 1972 and approved on September 22, 1972 (37 FR 19812). In this action, we propose to delete the later-submitted and approved fee rules for Lassen County. Lassen County APCD Rule 4:2 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 4:2 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 4:2 and the fee rules discussed above from the Lassen County APCD portion of the California SIP.

Mariposa County APCD

Mariposa County APCD Rule 205 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 205 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. In this action, we are proposing to delete Rule 205 from the Mariposa County APCD portion of the California SIP.

Mendocino County APCD

Mendocino County APCD Rule 4.A (General) is a general-nuisance type of prohibitory rule. As such, Rule 4.A was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Mendocino County APCD Rule 620 (Hearing Procedures) establishes certain hearing board procedures, and as such, was inappropriate for inclusion in the SIP and was thus approved by the EPA in error. In this action, we are proposing to delete Rules 4.A and 620 from the Mendocino County APCD portion of the California SIP.

Modoc County APCD

Modoc County APCD Rule 3:2 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 3:2 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Modoc County APCD Rule 3:6 (Additional Exception) provides an exception to Modoc County APCD Rule 3:2 and should be deleted if Rule 3:2 is deleted. In this action, we are proposing to delete Rules 3:2 and 3:6 from the Modoc County APCD portion of the California SIP.

Mojave Desert AQMD

Regulation of stationary air pollution sources in Riverside County is split between the South Coast AQMD (which has jurisdiction over all Riverside County except the Palo Verde Valley) and the Mojave Desert AQMD (which has jurisdiction over the Palo Verde Valley portion of Riverside County). The Palo Verde Valley portion of Riverside County left the South Coast AQMD and joined the Mojave Desert AQMD on July 1, 1994. The applicable SIP for the Riverside County portion of the Mojave Desert AQMD (*i.e.,* the Palo Verde Valley) consists, in part, of rules that were adopted originally by the Riverside County APCD and by the South Coast AQMD and then approved by the EPA prior to July 1, 1994, and that have not yet been superseded or rescinded through EPA approval of SIP revisions adopted by the Mojave Desert AQMD.

Riverside County APCD Rule 51 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 51 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Riverside County APCD Rule 106 (Record of Proceedings) is proposed herein for deletion because it establishes certain hearing board procedures and was thus inappropriate for inclusion in the SIP and approved by the EPA in error. South Coast AQMD Rule 1231 (Judicial Review), also proposed herein for deletion, establishes certain district board procedures, and as such, was inappropriate for inclusion in the SIP and approved by the EPA in error.[2] In this action, we are proposing to delete Riverside County Rules 51 and 106 and South Coast AQMD Rule 1231 from the Riverside County portion of the Mojave Desert AQMD portion of the California SIP.

Monterey Bay Air Resources District

The Monterey Bay Air Resources District (formerly named the Monterey Bay Unified APCD) was formed in 1974 when the Monterey-Santa Cruz County Unified APCD merged with the San Benito County APCD. The rules adopted by the predecessor agencies remain in the SIP to the extent they have not been superseded or rescinded through EPA approvals of rules or rescissions adopted by the unified air district. Monterey-Santa Cruz County Unified APCD Rule 402 (Nuisance) and San Benito County APCD Rule 403 (Nuisance) are general-nuisance type of prohibitory rules. As such, Rules 402 and 403 were inappropriate for inclusion in the SIP and, thus, were

[2] The EPA approved the rescission of South Coast AQMD Rule 1231 at 64 FR 71660 (December 22, 1999), but the rescission was not applicable within the Palo Verde Valley portion of Riverside County because the Palo Verde Valley had joined Mojave Desert AQMD several years before the rescission was approved.

approved by the EPA in error. In this action, we are proposing to delete Rules 402 and 403 from the Monterey Bay Air Resources District portion of the California SIP.

North Coast Unified AQMD

Established in 1982, the North Coast Unified AQMD has jurisdiction over Del Norte, Humboldt and Trinity counties, and the North Coast Unified AQMD portion of the applicable California SIP includes rules that were adopted by these counties and approved by the EPA and not superseded or rescinded through subsequent SIP actions. The introductory paragraphs for Del Norte County APCD's Regulation VI (Prohibitions) and Trinity County APCD's Regulation IV (Prohibitions) and Humboldt County APCD Rule 51 (Prohibited Emissions) are general-nuisance type of prohibitory rules. As such, the introductory paragraphs of Regulation IV and Rule 51 were inappropriate for inclusion in the SIP and, thus, were approved by the EPA in error. Del Norte County APCD Rules 620 (Hearing Procedures), 630 (Decisions), 640 (Record of Proceedings) and 650 (Appeal of Decision) and Trinity County APCD Rules 56 (Failure to Comply with Rules), 62 (Preliminary Matters), 67 (Lack of Permit), 68 (Issuance of Subpoenas, Subpoenas Duces Tecum) and 620 (Hearing Procedures) establish certain hearing board procedures, and as such, were inappropriate for inclusion in the SIP and were approved by the EPA in error. Del Norte County APCD Rule 340 (Technical Report Charges) is a local fee provision that also was not appropriate for inclusion in the SIP and was approved in error. In this action, we are proposing to delete the various rules listed above from the North Coast Unified AQMD portion of the California SIP.

Northern Sierra AQMD

Established in 1986, the Northern Sierra AQMD has jurisdiction over Nevada, Plumas, and Sierra counties, and the Northern Sierra AQMD portion of the applicable California SIP includes rules that were adopted by these counties and approved by the EPA and not superseded or rescinded through subsequent SIP actions. Plumas County APCD Rule 51 (Prohibited Emissions) is a general-nuisance type of prohibitory rule. As such, Rule 51 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Nevada County APCD Rules 700 (Applicable Articles of the Health and Safety Code), 703 (Contents of Petitions) (paragraphs (E) and (I)) and 711 (Evidence); Plumas County APCD Rules 701 (General), 702 (Filing Petitions), 703 (Contents of Petitions), 704 (Petitions for Variances), 710 (Notice of Hearing), 711 (Evidence), 712 (Preliminary Matters), 713 (Official Notice), 714 (Continuances), 715 (Decision) and 716 (Effective Date of Decision); and Sierra County APCD Rules 703 (Contents of Petitions) and 710 (Notice of Public Hearing) establish certain hearing board procedures, and as such, were inappropriate for inclusion in the SIP and were thus approved by the EPA in error. Plumas County APCD Rule 516 (Upset and Breakdown Conditions) (paragraph C (''Emergency Variance Provisions'')) and Sierra County APCD Rule 516 (Upset and Breakdown Conditions) (paragraph C (''Emergency Variance Provisions'')) allow an owner or operator of stationary sources to file a petition for an emergency variance under certain circumstances and provides for review and action on the petition by the APCO and hearing board. As described above, such provisions are inconsistent with section 110(i) of the CAA and were thus not appropriate for inclusion in the SIP and were approved by the EPA in error. In this action, we are proposing to delete the various rules listed above from the Northern Sierra AQMD portion of the California SIP.

Northern Sonoma County APCD

Northern Sonoma County APCD Rule 52 (Nuisance) is a general-nuisance type of prohibitory rule. As such, Rule 52 was inappropriate for inclusion in the SIP and, thus, was approved by the EPA in error. Northern Sonoma County APCD Rules 85 (Failure to Comply with Rules), 91 (Preliminary Matters), 96 (Lack of Permit), 600 (Authorization), 610 (Petition Procedure) and 620 (Hearing Procedures) establish certain hearing board procedures, and as such, were inappropriate for inclusion in the SIP and were thus approved by the EPA in error. In this action, we are proposing to delete Rules 52, 85, 91, 96, 600, 610 and 620 from the Northern Sonoma County APCD portion of the California SIP.

IV. What other corrections is the EPA proposing to make?

The EPA is also proposing certain error corrections not because the rules were originally approved into the SIP in error but because of other types of errors made in the course of the SIP rulemaking action. Each such proposal is described in the following paragraphs.

Antelope Valley AQMD

With respect to the Antelope Valley AQMD portion of the California SIP, we are proposing three additional corrections related to the following: Los Angeles County APCD Regulation VI (Orchard or Citrus Grove Heaters), South Coast AQMD Rule 1186 (PM_{10} Emissions from Paved and Unpaved Roads, and Livestock Operations), and Antelope Valley AQMD Rules 107 (Certification of Submissions and Emission Statements) and 1151 (Motor Vehicle and Mobile Equipment Coating Operations).

Rescission of Los Angeles County APCD Regulation VI (Orchard or Citrus Grove Heaters): Los Angeles County APCD Regulation VI includes the following rules: Rule 100 (Definitions), Rule 101 (Exceptions), Rule 102 (Permits Required), Rule 103 (Transfer), Rule 105 (Application for Permits), Rule 106 (Action on Applications), Rule 107 (Standards for Granting Permits), Rule 108 (Conditional Approval), Rule 109 (Denial of Applications), Rule 110 (Appeals), Rule 120 (Fees), and Rule 130 (Prohibitions). California submitted Los Angeles County APCD Regulation VI on June 30, 1972, and the EPA approved it on September 22, 1972 (37 FR 19812). Rule 120 was deleted without replacement at 67 FR 2573 (January 18, 2002), but the other Regulation VI rules remain in the SIP.

Regulation VI was rescinded in the Southeast Desert portion of Los Angeles County at 43 FR 40011 (September 8, 1978), but was reinstated throughout Los Angeles County when the EPA approved a SIP revision extending the jurisdiction of the South Coast AQMD to the Southeast Desert portion of the county and replacing the SIP rules that had been in effect for the Southeast Desert portion of Los Angeles County with those that applied in the South Coast AQMD. *See* 48 FR 52451 (November 18, 1983). At that time, the applicable SIP for the South Coast AQMD included Regulation VI because the EPA inadvertently failed to codify the rescission of the rules in an action affecting the South Coast AQMD portion of Los Angeles County published at 43 FR 25684 (June 14, 1978). In the final action on June 14, 1978, the EPA indicated: ''The changes to Regulation VI, Orchard Grove Heaters, contained in the above mentioned submittals and being acted upon by this notice include total replacement of county rules by California Health and Safety Code sections covering Orchard Heaters.'' 43 FR at 25685. However, the regulatory text deleting Regulation VI without replacement was not included in the

final rule, and thus, Regulation VI became part of the legacy SIP inherited by the Antelope Valley AQMD when it was established in 1997 in the Southeast Desert portion of Los Angeles County. In this action, we are proposing to add regulatory text deleting Regulation VI consistent with our action as described in the preamble to the June 14, 1978 final rule and to delete Los Angeles County APCD Regulation VI from the South Coast AQMD portion of the California SIP and to thereby delete Los Angeles County APCD Regulation VI from the Antelope Valley AQMD portion of the California SIP.

Deletion of South Coast Rule 1186 (PM_{10} Emissions from Paved and Unpaved Roads, and Livestock Operations) for Implementation in the Antelope Valley AQMD: In a final rule published at 72 FR 64946 (November 19, 2007), the EPA added a paragraph to 40 CFR 52.220(c)(278)(i)(A) deleting South Coast AQMD Rule 1186 without replacement for implementation in the Antelope Valley AQMD. This paragraph was added in error. Originally adopted on February 14, 1997, no version of South Coast AQMD Rule 1186 has been approved by the EPA for implementation in the Antelope Valley. *See* footnote 4 in the proposed rule (63 FR 42786, August 11, 1998).[3] Thus, we are proposing to delete the erroneous regulatory language that was added by the November 19, 2007 final rule.

Reorganization of the CFR Affecting Antelope Valley AQMD Rules 107 and 1151: In a final rule published at 80 FR 13495 (March 16, 2015), we approved a rule adopted by the Sacramento Metropolitan AQMD but the amendatory instructions revising paragraph 40 CFR 52.220(c)(423) were in error such that rules that had been approved and listed under ''(i) Incorporation by reference,'' were erroneously moved under the ''(ii) Additional materials'' portion of paragraph 40 CFR 52.220(c)(423), including Antelope Valley AQMD Rules 107 (Certification of Submissions and Emission Statements) and 1151 (Motor Vehicle and Mobile Equipment Coating Operations), which were approved in 2013. See 78 FR 21545 (April 11, 2013) (approval of Rule 107) and 78 FR 58459 (September 24, 2013) (approval of Rule 1151). We are proposing to revise paragraph 40 CFR 52.220(c)(423) consistent with the rulemakings affecting that paragraph.

Eastern Kern APCD

Approval of 15% and Post-1996 Rate-of-Progress (ROP) Elements for the 1-Hour Ozone NAAQS: On January 8, 1997 (62 FR 1150), the EPA took final action to approve revisions to the California SIP for ozone for six nonattainment areas, including the San Joaquin Valley ozone nonattainment area, which at the time was defined to include all of Kern County (as well as seven other counties in the Central Valley) and thus subject to the jurisdiction of two air districts: The San Joaquin Valley Unified APCD and the Eastern Kern APCD. Among other elements, the EPA approved ''the ROP plans (the original 1994 submittal for 15% ROP requirements and the Kern District portion of the San Joaquin Valley, and the 1996 substitute submittal for post-1996 requirements) as meeting the 15% ROP requirements of section 182(b)(1) and the post-1996 ROP requirements of section 182(c)(2) of the Act.'' 62 FR at 1172. In the corresponding regulatory language of the January 8, 1997 final rule, the EPA explicitly identified the approved 15% and post-1996 ROP elements from the San Joaquin Valley Unified APCD but failed to do the same for the Eastern Kern APCD. *Compare* 40 CFR 52.220(c)(204)(i)(D)(1) (for the San Joaquin Valley Unified APCD) with 40 CFR 52.220(c)(205)(i)(A)(1) (for the Eastern Kern APCD). 62 FR at 1186. To clarify that, in our 1997 final rule, the EPA approved the 15% and post-1996 ROP demonstrations from the Eastern Kern APCD for the 1-hour ozone standard, we propose to revise 40 CFR 52.220(c)(205)(i)(A)(1) to explicitly add the 15% ROP and post-1996 ROP plans to the existing list of approved elements.

Incorporation by Reference of Approved Rules 108 and 417: On April 22, 2004 (69 FR 21713), the EPA took final action to approve certain rules adopted by the Eastern Kern APCD, including Rules 108 (Stack Sampling) and 417 (Agricultural and Prescribed Burning). Due to erroneous amendatory instructions, the CFR was not updated to reflect this final action. More specifically, the amendatory instructions on page 21715 of the April 22, 2004 final rule should have added paragraph (c)(321)(i)(*A*) to section 40 CFR 52.220 instead of paragraph (c)(321)(i)(*B*) because the latter was already in use to identify certain rules adopted by the San Joaquin Valley Unified APCD. We propose to fix this error by correcting the amendatory instructions.

El Dorado County AQMD

Reorganization of the CFR Affecting El Dorado County AQMD Rule 101: On October 10, 2001 (66 FR 51578), the EPA approved revisions to the El Dorado County AQMD portion of the California SIP. Among the approved revisions was El Dorado County AQMD Rule 101 (General Provisions and Definitions). The final rule codifies the approval of Rule 101 in paragraph 40 CFR 52.220(c)(280)(i)(*B*), which lists approved rules adopted by the El Dorado County AQMD, but due to a publishing error, the codification of the approval of Rule 101 is found in paragraph 40 CFR 52.220(c)(280)(i)(*C*), which lists EPA-approved rules adopted by the Yolo-Solano AQMD. We propose to fix this error accordingly.

Approval of El Dorado County AQMD Rule 1000.1 (Emission Statement Waiver): On May 26, 2004 (69 FR 29880), the EPA approved emissions statement rules for seven air districts in California, including Rule 1000 (Emission Statement) submitted for the El Dorado County AQMD portion of the California SIP. All but one of the emissions statement rules that were approved on May 26, 2004 include language providing a waiver to any class or category of stationary sources that emit less than 25 tons per year of volatile organic compounds (VOC) or oxides of nitrogen (NO_X) if certain conditions are met, which is consistent with CAA section 182(a)(3)(B)(ii). Unlike the rules that provide for the waiver as a paragraph within the emissions statement rule itself, the El Dorado County AQMD provides for the exemption in a separate rule, namely, Rule 1000.1 (Emission Statement Waiver).[4] Although Rule 1000.1 was submitted along with Rule 1000 on November 12, 1992, we only listed the latter rule as approved in our May 26, 2004 final action but should have listed both. We propose to add Rule 1000.1 (Emission Statement Waiver) in paragraph 40 CFR 52.220(c)(190)(i)(C)(1) to clarify that our May 26, 2004 approval included both Rule 1000 and Rule 1000.1.

Reorganization of the CFR Affecting El Dorado County AQMD Actions Listed

[3] Footnote 4 states: ''As indicated above, the SCAQMD has jurisdiction over the South Coast Air Basin (SCAB) and Coachella Valley PM–10 serious nonattainment areas. This **Federal Register** action for the SCAQMD excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.'' 63 FR 42786, at 42788 (August 11, 1998).

[4] El Dorado County AQMD Rule 1000.1 provides: ''The APCO may waive this requirement to any class or category of stationary sources which emit less than 25 tons per year of oxides of nitrogen or reactive organic gas if the district provides the Air Resources Board with an emission inventory of sources emitting greater than 10 tons per year of nitrogen oxides or reactive organic gas based on the use of emission factors acceptable to the Air Resources Board.''

in 40 CFR 52.220(c)(27)(viii): On July 9, 2008 (73 FR 39237), the EPA approved revisions to the Northern Sierra AQMD portion of the California SIP, including rescission of certain rules that had been adopted by the Nevada County APCD. In the July 9, 2008 final rule, we added regulatory language to reflect the rule rescissions in paragraph 40 CFR 52.220(c)(27)(*vii*), which lists rules and rule rescissions applicable to the Nevada County APCD portion of the California SIP, but due to a publisher's error, the regulatory language is found in paragraph 40 CFR 52.220(c)(27)(*viii*), which lists rules and rule rescissions applicable to the El Dorado County AQMD portion of the California SIP. We propose to fix this error accordingly.

Great Basin Unified APCD

Disapproval of Great Basin Unified APCD Rule 401 (Fugitive Dust): On August 13, 2009 (74 FR 40750), the EPA took final action to disapprove revisions to the Great Basin Unified APCD portion of the California SIP. Specifically, the EPA *disapproved* Great Basin Unified APCD Rule 401 (Fugitive Dust); however, we mistakenly added a paragraph incorporating this rule by reference in 40 CFR 52.220 (''Identification of plan'') as if we had *approved* the rule as part of the California SIP. To correct this error, we propose to remove the corresponding paragraph (*i.e.,* 40 CFR 52.220(c)(350)(i)(A)(2)) from 40 CFR 52.220.

Lake County AQMD

Reinstatement of Lake County AQMD Tables I through IV: On June 27, 1997 (62 FR 34641), the EPA took final action to correct certain errors in previous actions on SIPs and SIP revisions by deleting without replacement the affected local rules. With respect to certain rules that were adopted by the Lake County AQMD, submitted by California on February 10, 1977, and approved by the EPA on August 4, 1978 (43 FR 34463), we added a paragraph, *i.e.,* (c)(37)(iv)(D), to 40 CFR 52.220 (Identification of plan) that states: ''Previously approved on August 4, 1978 and now deleted without replacement Rules . . . , and Tables I to V.'' 62 FR at 34645. First, Lake County AQMD Table V (Table of Standards, Applicable Statewide) was *disapproved* on August 4, 1978 (43 FR 34463), and because it was disapproved, it was not part of the SIP and need not be deleted. Second, Lake County AQMD Table I (Agencies Designated to Issue Agricultural Burning Permits), Table II (Daily Quota of Agricultural Material that May Be Burned by Watershed), Table III (Guides for Estimating Dry Weights of Several California Fuel Types), and Table IV (Particulate Matter Emissions Standard for Process Units and Process Equipment) are substantive provisions relied upon by certain prohibitory rules and were not approved ''in error.'' We are proposing to reinstate Lake County AQMD Tables I through IV by revising the regulatory language in 40 CFR 52.220(c)(37)(iv)(D) accordingly.[5]

Mojave Desert AQMD

Rescission of Riverside County APCD Regulation V (Orchard or Citrus Grove Heaters): Riverside County APCD Regulation V includes the following rules: Rule 75 (Definitions), Rule 76 (Exceptions), Rule 77 (Permits Required), Rule 78 (Application of Permits), Rule 79 (Action on Applications), Rule 80 (Standards for Granting Permits), Rule 81 (General Restrictions and Conditions of Permits), Rule 83 (Denial of Applications), Rule 84 (Appeals), Rule 85 (Classification of Orchard, Field Crop or Citrus Grove Heaters), and Rule 86 (Prohibitions). California submitted Riverside County APCD Regulation V on February 21, 1972 as part of the original California SIP, and the EPA approved it on May 31, 1972 (37 FR 10842).

Regulation V was rescinded in the Southeast Desert portion of Riverside County at 43 FR 40011 (September 8, 1978), but was reinstated throughout Riverside County when the EPA approved a SIP revision extending the jurisdiction of the South Coast AQMD to the Southeast Desert portion of the county and replacing the SIP rules that had been in effect for the Southeast Desert portion of Riverside County with those that applied in the South Coast AQMD. *See* 47 FR 25013 (June 9, 1982). At that time, the applicable SIP for the South Coast AQMD included Regulation V because the EPA inadvertently failed to codify the rescission of the rules in an action affecting the South Coast AQMD portion of Riverside County published at 43 FR 25684 (June 14, 1978). In the June 14, 1978, final action, the EPA indicated: ''The changes to Regulation VI, Orchard Grove Heaters, contained in the above mentioned submittals and being acted upon by this notice include total replacement of county rules by California Health and Safety Code sections covering Orchard Heaters.'' 43 FR at 25685. However, the regulatory text deleting Regulation V without replacement was not included in the final rule, and thus, Regulation V became part of the legacy SIP inherited by the Mojave Desert AQMD when the Palo Verde Valley portion of Riverside County joined the Mojave Desert AQMD in 1994. In this action, we are proposing to add regulatory text deleting Regulation V consistent with our action as described in the preamble to the June 14, 1978 final rule and to delete Riverside County APCD Regulation V from the South Coast AQMD portion of the California SIP and to thereby delete Riverside County APCD Regulation V from the Mojave Desert AQMD portion of the California SIP.

Monterey Bay Air Resources District

Disapproval of Monterey Bay Air Resources District Rule 200 (Permits Required): On March 26, 2015 (80 FR 15899), the EPA took final action to approve or disapprove certain revisions to the Monterey Bay Air Resources District portion of the California SIP. One of the actions finalized on March 26, 2015 was the disapproval of an amended version of Rule 200 (Permits Required) that had been submitted on May 8, 2001. Although we *disapproved* Rule 200, we mistakenly added a paragraph incorporating this rule by reference in 40 CFR 52.220 (''Identification of plan'') as if we had *approved* the rule as part of the California SIP. *See* 40 CFR 52.220(c)(284)(i)(A)(5). To correct this error, we propose to remove the corresponding paragraph (*i.e.,* (c)(284)(i)(A)(5)) from section 52.220 (Identification of plan).

Rescission of Monterey Bay Air Resources District Rule 208 (Standards for Granting Permits to Operate): In that same March 26, 2015, final rule (80 FR 15899), we approved the rescission of Monterey Bay District Rule 208 (Standards for Granting Permits to Operate), which had been submitted on February 6, 1985 and approved on July 13, 1987 (52 FR 26148), but we did not add corresponding regulatory language to remove the rule from the SIP. We propose to add a paragraph to 40 CFR 52.220(c)(159)(iii) to indicate that Monterey Bay District Rule 208 has been deleted without replacement.

North Coast Unified AQMD

Erroneous Amendatory Instruction for Disapproval of Certain Open Burning Rules: On May 18, 1981 (46 FR 27116), the EPA disapproved certain open burning rules adopted by the Santa Barbara County APCD, but the amendatory instructions erroneously listed the disapproved rules in

[5] Since 1997, the EPA has approved newer versions of Lake County AQMD Tables I and II, and thus, as a practical matter, reinstatement of Tables I through IV, as approved in 1978, would only reinstate Tables III and IV as part of the current applicable SIP for the Lake County AQMD portion of the California SIP.

subparagraph (6) of 40 CFR 52.273(a), which lists disapproved rules adopted by the Humboldt County APCD. The correct listing should have been in subparagraph (19), which lists disapproved rules adopted by the Santa Barbara County APCD. The erroneous amendatory instructions were based on the previous format of 40 CFR 52.273 and failed to account for the complete re-organization of 40 CFR 52.273 that the EPA published that same year at 46 FR 3883 (January 16, 1981). We are proposing to revise paragraph 40 CFR 52.273 to accurately reflect the 1981 disapproval of the Santa Barbara County open burning rules.

Northern Sierra AQMD

Codification of Approval of Northern Sierra AQMD Rules 212 and 213: On September 16, 1997 (62 FR 48480), the EPA took direct final action to approve certain revisions to the Northern Sierra AQMD portion of the California SIP. In the direct final rule, we indicated that we were approving Northern Sierra AQMD Rules 212 (Process Weight Table) and 213 (Storage of Gasoline Products) along with many other district rules, *see* 62 FR 48481/column 1 and 62 FR at 48482/column 2; however, in the regulatory portion of the direct final rule, we failed to include Rules 212 and 213 in the list of approved rules. We are proposing to add Rules 212 and 213 to the list of approved rules in 40 CFR 52.220(c)(246)(i)(A)(1).

Reinstatement of Nevada County APCD Rule 404 (Excluding Paragraph (D)): On June 27, 1997 (62 FR 34641), the EPA took final action to correct certain errors in previous actions on SIPs and SIP revisions by deleting without replacement the affected local rules. With respect to a rule that was adopted by the Nevada County APCD, submitted by California on October 15, 1979, and approved by the EPA on May 18, 1981 (46 FR 27115), we added a paragraph, *i.e.,* (c)(52)(xii)(B), to 40 CFR 52.220 (Identification of plan) that states: ''Previously approved on May 18, 1981 and now deleted without replacement Rule 404.'' 62 FR at 34646. In our proposed error correction, 61 FR 38664 (July 25, 1996), we indicated that the rule we intended to delete was Rule 404 (''Emergency Variance Procedures''), but the correct title of Rule 404 is ''Upset Conditions, Breakdown or Scheduled Maintenance,'' and ''Emergency Variance Procedures'' is the title of paragraph (D) of Rule 404. Thus, we intended to delete only paragraph (D) of Rule 404 but erroneously indicated in the final rule that we were deleting without replacement the entire rule. Accordingly, we propose to amend paragraph (c)(52)(xii)(B) to refer only to paragraph (D) of Rule 404.

V. Proposed Action and Request for Public Comment

The EPA has reviewed the rules listed in Table 1 above and determined that they were previously approved into the applicable California SIP in error. Deletion of these rules will not relax the applicable SIP and is consistent with the Act. Therefore, under section 110(k)(6) of the CAA, the EPA is proposing to delete the rules listed in Table 1 above and any earlier versions of these rules from the corresponding air pollution control district portions of the California SIP. These rules include general nuisance provisions, federal NSPS or NESHAP requirements, hearing board procedures, variance provisions, and local fee provisions. We are also proposing to make certain other corrections to fix errors in previous rulemakings on California SIP revisions as described in section IV above. We will accept comments from the public on this proposal until September 26, 2018.

VI. Incorporation by Reference

In this action, for the most part, the EPA is proposing to delete rules that were previously incorporated by reference from the applicable California SIP. However, we are also proposing to include in a final EPA rule regulatory text that reinstates incorporation by reference of certain rules that were previously incorporated by reference but deleted in error, and regulatory text that includes incorporation by reference of rules not previously incorporated. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to reinstate incorporation by reference Lake County AQMD Table I (Agencies Designated to Issue Agricultural Burning Permits), Table II (Daily Quota of Agricultural Material that May Be Burned by Watershed), Table III (Guides for Estimating Dry Weights of Several California Fuel Types), and Table IV (Particulate Matter Emissions Standard for Process Units and Process Equipment) and Nevada County APCD Rule 404 (Upset Conditions, Breakdown or Scheduled Maintenance) (excluding paragraph (D)) and to incorporate by reference Eastern Kern APCD Rules 108 (Stack Sampling) and 417 (Agricultural and Prescribed Burning), El Dorado County AQMD Rule 1000.1 (Emission Statement Waiver) and Northern Sierra AQMD Rules 212 (Process Weight Table) and 213 (Storage of Gasoline Products), as described in section IV of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely corrects errors in previous rulemakings and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or

environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 2 U.S.C. 7401 *et seq.*

Dated: August 8, 2018.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–18408 Filed 8–24–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R06–OAR–2016–0611; FRL–9982–50—Region 6]

Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan: Proposal of Best Available Retrofit Technology (BART) and Interstate Transport Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 17, 2017, the EPA published a final rule partially approving the 2009 Texas Regional Haze State Implementation Plan (SIP) submission and promulgated a Federal Implementation Plan (FIP) for Texas to address certain outstanding Clean Air Act (CAA) regional haze requirements. Because the EPA believes that certain aspects of the final rule could benefit from additional public input, we are proposing to affirm our October 2017 SIP approval and FIP promulgation and to provide the public with an opportunity to comment on relevant aspects, as well as other specified related issues.

DATES: Comments must be received on or before October 26, 2018.

Public Hearing:

We are holding an information session, for the purpose of providing additional information and informal discussion for our proposal. We are also holding a public hearing to accept oral comments into the record:

Date: Wednesday, September 26, 2018

Time: Information Session: 1:30 p.m.–3:30 p.m.

Public hearing: 4:00 p.m.–8:00 p.m. (including a short break)

Location: Joe C. Thompson Conference Center (on the University of Texas (UT) Campus), Room 1.110, 2405 Robert Dedman Drive, Austin, Texas 78712.

For additional logistical information regarding the public hearing please see the **SUPPLEMENTARY INFORMATION** section of this action.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2016–0611, at *http://www.regulations.gov* or via email to *R6_TX-BART@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

The Texas regional haze SIP is also available online at: *https://www.tceq.texas.gov/airquality/sip/bart/haze_sip.html.* It is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Jennifer Huser, Air Planning Section (6MM–AA), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7347; email address *Huser.Jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Joe C. Thompson Conference Center parking is adjacent to the building in Lot 40, located at the intersection of East Dean Keeton Street and Red River Street. Additional parking is available at the Manor Garage, located at the intersection of Clyde Littlefield Drive and Robert Dedman Drive. If arranged in advance, the UT Parking Office will allow buses to park along Dedman Drive near the Manor Garage for a fee.

The public hearing will provide interested parties the opportunity to present information and opinions to us concerning our proposal. Interested parties may also submit written comments, as discussed in the proposal. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. We will not respond to comments during the public hearing. When we publish our final action, we will provide written responses to all significant oral and written comments received on our proposal. To provide opportunities for questions and discussion, we will hold an information session prior to the public hearing. During the information session, EPA staff will be available to informally answer questions on our proposed action. Any comments made to EPA staff during an information session must still be provided orally during the public hearing, or formally in writing within 30 days after completion of the hearings, in order to be considered in the record.

At the public hearing, the hearing officer may limit the time available for each commenter to address the proposal to three minutes or less if the hearing officer determines it to be appropriate. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral

Attachment 5

published on July 11, 1996. EPA will not institute a second comment period on this document.

EFFECTIVE DATE: This withdrawal is effective September 6, 1996.

FOR FURTHER INFORMATION CONTACT: William C. Denman, Regulatory Planning and Development Section, Air Programs Branch, United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 100 Alabama Street, SW, Atlanta, Georgia 30303–3104, (404) 562–9030.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the July 11, 1996 Federal Register at (61 FR 36502), and in the document located in the proposed rule section of the July 11, 1996 Federal Register at (61 FR 36534).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: August 29, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–22809 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[FRL–5560–4]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Wyoming; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rulemaking.

SUMMARY: EPA is promulgating corrections to the State Implementation Plan (SIP) for the State of Wyoming regarding the State's ambient standards for fluorides and hydrogen sulfide and the State's odor control regulation. EPA has determined that these rules were erroneously incorporated into the SIP. EPA is removing these rules from the approved Wyoming SIP because the rules do not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the Clean Air Act. The intended effect of this correction to the SIP is to make the SIP consistent with the requirements of the Clean Air Act, as amended in 1990 (''the Act''), regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

In addition, EPA is amending the boundary description for the ''Powder River Basin'' PM–10 unclassifiable area in 40 CFR 81.351. EPA promulgated revisions to 40 CFR 81.351 in a November 3, 1995 rulemaking, and EPA erroneously published an incorrect boundary description for the Powder River Basin area. This document corrects that error.

DATES: This action will become effective on November 5, 1996, unless adverse comments are received within 30 days of publication. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relative to this action are available for inspection during normal business hours at the following location: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2–A, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Corrections to SIP

The Act was first amended in 1970. At this time, a large number of SIPs were submitted to EPA to fulfill the new Federal requirements. In many cases, states and districts submitted their entire programs, including many elements not required pursuant to the Act. Due to resource constraints at that time, EPA's review of these submittals focused primarily on the required technical, legal, and enforcement elements of the submittals. At the time, EPA did not perform a detailed review of the numerous provisions submitted, to determine if each provision was related to protection of the NAAQS. Provisions approved as part of states' SIPs should generally be related to attainment and maintenance of the NAAQS, consistent with the authority in section 110 of the Act under which these plans are approved by EPA.

During a recent review of the contents of the Wyoming SIP, EPA determined that three provisions of the State's rules were approved as part of the SIP which did not have a reasonable connection to the NAAQS-related air quality goals of the Act. These State rules include the ambient standard for hydrogen sulfide in Section 7 of the Wyoming Air Quality Standards and Regulations (WAQSR), the 1972 version of the ambient standard for fluorides in Section 11 of the WAQSR,[1] and the odor control rules in Section 16 of the WAQSR. In addition, documents included in the State's November 19, 1993 title V operating permit program submittal indicated that the State did not consider these three rules part of the federally-approved SIP. EPA consequently notified the State of this discrepancy in a June 26, 1995 letter and offered to correct the SIP pursuant to section 110(k)(6) of the Act by removing these three rules from the SIP, since they are not reasonably connected to the NAAQS-related air quality goals of the Act. The State responded in a letter dated September 19, 1995 requesting that EPA remove these three provisions from the approved SIP.

Section 110(k)(6) of the amended Act provides: Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Since the State of Wyoming's rules for hydrogen sulfide ambient standards, fluoride ambient standards, and odor control have no reasonable connection to the NAAQS-related air quality goals of the Act and since the State has requested that EPA remove these rules from the approved SIP, EPA has found that approval of these State rules was in error. Consequently, EPA is removing Sections 7, 11, and 16 of the WAQSR from the approved Wyoming SIP pursuant to section 110(k)(6) of the Act.

II. Correction of Boundary Description for the Powder River Basin Area

On November 3, 1995, EPA promulgated revisions to the State of Wyoming's PM–10 area designation table in 40 CFR 81.351 pursuant to the State's adoption and EPA's approval of prevention of significant deterioration (PSD) increments for PM–10 (see 60 FR 55800). In that notice, EPA cited an earlier and incorrect boundary description for the area designated as the ''Powder River Basin'' in Campbell and Converse counties. EPA promulgated a revised boundary description for the Powder River Basin area on September 12, 1995 (60 FR 47299), and that revised boundary

[1] Section 11 of the WAQSR was amended by the State in 1986, but that version was never submitted to, or approved by, EPA as part of the SIP for Wyoming.

should have been reflected in the November 3, 1995 rulemaking. Therefore, this notice corrects the boundary description for the Powder River Basin area to reflect the September 12, 1995 rulemaking.

III. Final Action

EPA is removing Sections 7, 11, and 16 of the WAQSR from the approved Wyoming SIP pursuant to section 110(k)(6) of the Act. In addition, EPA is correcting the boundary description for the Powder River Basin PM–10 unclassifiable area in 40 CFR 81.351 to reflect the boundary description promulgated for the area on September 12, 1995 (60 FR 47299).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to correct the SIP should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 Federal Register (59 FR 24054), this action will be effective November 5, 1996, unless, by October 7, 1996, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 5, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.,* EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This action does not impose any new requirements. Therefore, the Administrator certifies that this action will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this correction action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action corrects this state implementation plan, pursuant to section 110(k)(6) of the Act, by removing three State rules that were erroneously incorporated into the SIP. Thus, this action will impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 5, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 14, 1996.

Jack W. McGraw,

Acting Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart ZZ—Wyoming

2. A new § 52.2634 is added to read as follows:

§ 52.2634 Correction of approved plan.

The following rules of the Wyoming Air Quality Standards and Regulations have been removed from the approved plan pursuant to section 110(k)(6) of the Clean Air Act (as amended in 1990): Section 7, Hydrogen Sulfide; Section 11, Fluorides; and Section 16, Odors.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.351, the Wyoming PM–10 table is amended by revising the entry for ''Powder River Basin'' to read as follows:

§ 81.351 Wyoming.

* * * * *

WYOMING—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*	*		*
Campbell County (part)	11/15/90	Unclassifiable	.....	
Converse County (part).				
That area bounded by Township 40 through 52 North, and Ranges 69 through 73 West, inclusive of the Sixth Principal Meridian, Campbell and Converse Counties, excluding the areas defined as the Pacific Power and Light Area, the Hampshire Energy Area, and the Kennecott/Puron PSD Baseline Area.—Powder River Basin.				
* * * *	*	*		*

* * * * *

[FR Doc. 96–22645 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5604–9]

40 CFR Part 300

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of Whiteford Sales & Service, Inc., site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 5 announces the deletion of the Whiteford Sales & Service, Inc., (WSS) site from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Indiana because it has been determined that all appropriate Fund-financed responses at the WSS site under CERCLA have been implemented, that the WSS site poses no significant threat to public health or the environment, and that no further clean-up action at the site is appropriate.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Tierney, U.S. EPA Region 5 (SR–6J), 77 W. Jackson Blvd., Chicago, IL 60604; (312) 886–4785. Information on the site is available at the local information repository located at: The St. Joseph County Public Library, Main Branch, 122 W. Wayne St., South Bend, Indiana. Requests for copies of documents should be directed in writing to the Regional Docket Office. The contact for the Regional Docket Office is E. Levy, U.S. EPA Region 5 (MRI–13J), 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Whiteford Sales & Service, Inc. (WSS) site located within the city limits of South Bend, St. Joseph County, IN, approximately 1 and ½ miles southwest of downtown. A Notice of Intent to Delete for the site was published on May 3, 1996 in the Federal Register (61 FR 19889). The closing date for public comments on the Notice of Intent to Delete was June 3, 1996. EPA received no comments and, therefore, no Responsiveness Summary was prepared.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental potection, Air pollution control, chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 13, 1996.

David A. Ullrich,

Acting Regional Administrator.

40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the site ''Whiteford Sales & Service/ Nationalease, South Bend, Indiana''.

[FR Doc. 96–22650 Filed 9–5–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[CGD 94–029]

RIN 2115–AE94

Modernization of Examination Methods

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

Attachment 6

(C) During a 60-day period prescribed by the Librarian in a proceeding to set reasonable terms and rates for a new type of eligible nonsubscription service or new subscription service, or

(D) As otherwise agreed to by the parties.

(4) Phonorecords: During 1997 and each subsequent tenth calendar year.

(5) Digital Phonorecord Deliveries: During 1997 and each subsequent fifth calendar year, or as otherwise agreed to by the parties.

(6) Coin-operated phonorecord players (jukeboxes): Within one year of the expiration or termination of a negotiated license authorized by 17 U.S.C. 116.

* * * * *

§ 251.62 [Amended]

6. In § 251.62, paragraph (a) is amended by removing the word ''subscription'' and adding in its place the phrase ''ephemeral recordings, certain'' after the word ''cable,''.

Dated: November 18, 1998.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–31657 Filed 11–25–98; 8:45 am]

BILLING CODE 1410–33–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY29–1–187a; FRL–6193–5]

Approval and Promulgation of Implementation Plans; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating a correction to the State Implementation Plan (SIP) for the State of New York regarding the State's general prohibition on air pollution. EPA has determined that this rule was erroneously incorporated into the SIP. EPA is removing this rule from the approved New York SIP because the rule does not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the Clean Air Act. The intended effect of this correction to the SIP is to make the SIP consistent with the requirements of the Clean Air Act, as amended in 1990 (''the Act''), regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

EFFECTIVE DATE: This direct final rule is effective on January 26, 1999 without further notice, unless EPA receives adverse comment by December 28, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the documents relevant to this action are available for inspection during normal business hours at the following address:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Correction to SIP

EPA has determined that Part 211.2 of Title 6 of the New York Code of Rules and Regulations (NYCRR), which was approved in 1984 as part of the SIP, does not have a reasonable connection to the NAAQS and related air quality goals of the Clean Air Act and is not properly part of the SIP.

Part 211.2 is a general prohibition against air pollution. Such a general provision is not designed to control NAAQS pollutants such that EPA could rely on it as a NAAQS attainment and maintenance strategy. After it came to the attention of EPA that Part 211.2 was not properly part of the SIP, EPA in turn brought the matter to the attention of the New York State Department of Environmental Conservation (NYSDEC). NYSDEC shared EPA's understanding that Part 211.2 was improperly approved into the SIP.

EPA, pursuant to section 110(k)(6) of the Act, is correcting the SIP since Part 211.2 is not reasonably related to the NAAQS-related air quality goals of the Act. Section 110(k)(6) of the amended Act provides: ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise any such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public.'' It should be noted that section 110(k)(6) has also been used by EPA to delete an improperly approved odor provision from the Wyoming SIP. 61 FR 47058 (1996).

Since the State of New York's Part 211.2 has no reasonable connection to the NAAQS-related air quality goals of the Act, EPA has found that the approval of this State rule was in error. The State has reached the same conclusion and concurs with EPA's decision that Part 211.2 was submitted and approved in error and should be removed from the approved SIP. Consequently, EPA is removing 6 NYCRR Part 211.2 from the approved New York SIP, pursuant to section 110(k)(6) of the Act.

II. EPA Final Rulemaking Action

EPA is removing 6 NYCRR Part 211.2 of the New York air quality Administrative Rules from the approved New York SIP pursuant to section 110(k)(6) of the Act.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective January 26, 1999 without further notice unless the Agency receives relevant adverse comments by December 28, 1998.

If EPA receives such comments, then EPA will publish a timely withdrawal of the final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 26, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.)

12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intgovernmental relations, Reporting and recordkeeping.

Dated: November 16, 1998.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C 7401 *et seq.*

Subpart HH—New York

2. Section 52.1679 is amended by revising the entry for ''Part 211, General Prohibitions'' to read as follows:

§ 52.1679 EPA-approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
* *	*	* *	* *
Part 211, General Prohibitions	8/11/83	November 27, 1998 [citation of this document].	Section 211.2 has been removed from the approved plan.
* *	*	* *	* *

[FR Doc. 98–31542 Filed 11–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 055–1055; FRL–6134–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve the State Implementation Plan (SIP) revisions submitted by the state of Missouri to broaden the current visible emissions rule exceptions to include smoke-generating devices. This revision would allow smoke generators to be used for military and other types of training when operated under applicable requirements.

DATES: This rule is effective on December 28, 1998.

ADDRESSES: Comment may be addressed to Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following address for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air & Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION:

I. Background

This amendment broadens the current rule exceptions to include smoke-generating devices in general when a required permit or a written determination that a permit is not required has been issued. The amendment defines a smoke-generating device as a specialized piece of equipment which is not an integral part of a commercial, industrial or manufacturing process and whose sole purpose is the creation and dispersion of fine solid or liquid particles in a gaseous medium. This revision would allow smoke generators to be used for military training at such facilities as Fort Leonard Wood as long as such facilities operate in accordance with applicable permit requirements.

No comments were received in response to the public comment period regarding this rule action.

For more background information the reader is referred to the proposal for this rulemaking published on May 7, 1998, at 63 FR 25191.

II. Final Action

The EPA is taking final action to approve, as a revision to the SIP, the amendment to Rule 10 CSR 10–3.080, ''Restriction of Emission of Visible Air Contaminants,'' submitted by the state of Missouri on July 10, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of

Attachment 7

Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 15, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 6, 2006.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

§ 52.2270 [Amended]

■ 2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended under Chapter 106, Subchapter A, by removing the entry for section 106.5, ''Public Notice.''

[FR Doc. 06–2478 Filed 3–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–GA–0005–200601; FRL–8045–4]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is correcting the State Implementation Plan (SIP) for the State of Georgia to remove a provision relating to a Georgia general ''nuisance'' rule. EPA has determined that this provision relating to Georgia Rule 391–3–1.02(2)(a)1, was erroneously incorporated into the SIP. EPA is removing this rule from the approved Georgia SIP because the Georgia rule is not related to the attainment and maintenance of the national ambient air quality standards (NAAQS). This final rule addresses comments made on the proposed rulemaking EPA previously published for this action.

DATES: *Effective Date:* This rule will be effective April 17, 2006.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2005–GA–0005. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is taking final action to remove Georgia Rule 391–3–1.02(2)(a)1, a general ''nuisance'' provision, from the Georgia SIP. EPA has determined that this rule was erroneously incorporated into the SIP. EPA is removing this rule from the approved Georgia SIP, because the rule is not related to the attainment and maintenance of the NAAQS.

II. What Is the Background for the Action?

The first significant amendments to the Clean Air Act (CAA) occurred in 1970 and 1977. Following these amendments, a large number of SIPs were submitted to EPA to fulfill new Federal requirements. In many cases, states and districts submitted their entire programs, including many elements not required pursuant to the CAA. Due to resource constraints during this timeframe, EPA's review of these submittals focused primarily on the required technical, legal, and enforcement elements of the submittals. At the time, EPA did not perform a detailed review of the numerous provisions submitted to determine if each provision was related to the attainment and maintenance of the NAAQS. However, provisions approved by EPA as part of states' SIPs should generally be related to attainment and maintenance of the NAAQS, consistent with the authority in section 110 of the CAA under which these plans are approved by EPA.

During the process of responding to a recent citizen petition of a title V operating permit in Georgia, EPA determined that a provision of the State's rules, approved as part of the SIP on January 3, 1980 (45 FR 780), is not related to the attainment and maintenance of the NAAQS. This State rule, ''Georgia Air Quality Control Rule 391–3–1.02(2)(a)1,'' is a general nuisance provision. Georgia has never used this rule as part of a Federal air quality standard attainment or maintenance plan. Georgia has also not relied on or attributed any emission reductions from this rule to any such plans (October 31, 2005, e-mail from Ron Methier, Georgia Environmental Protection Division, to Dick Schutt, U.S. Environmental Protection Agency.) For these reasons, EPA's 1980 approval of this provision into the Georgia SIP was in error. EPA is therefore removing the provision from the approved SIP under the authority of section 110(k)(6) of the CAA. Section 110(k)(6) provides: ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation, revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.''

On November 29, 2005 (70 FR 71446), EPA proposed to remove the provision from the approved SIP under the authority of section 110(k)(6) of the CAA. EPA subsequently received both supporting and adverse comments. At the request of several commenters, EPA reopened and extended the comment period through January 23, 2006 (71 FR 2177, January 13, 2006). In this action, EPA is addressing the adverse comments received and taking final action as described in Section I and Section IV.

III. Response to Comments

EPA received comments from three commenters who were in favor of the proposed change, five commenters who asked general questions, and two commenters who opposed the proposed change to the Georgia SIP. A summary of the adverse comments received on the proposed rule, published November 29, 2005 (70 FR 71446) and EPA's response to these comments is presented below.

Comment: The commenter asserts that the purpose of the rule change proposed in the November 29, 2005 **Federal Register** notice (70 FR 71446) is to thwart citizen efforts to end hazardous air releases that they assert are a threat to their children, health, and economy.

Response: The purpose of SIPs, approved pursuant to section 110 of the CAA, is to implement a program to attain and maintain the NAAQS. The Georgia nuisance rule is not directed at either attainment or maintenance of any NAAQS. Therefore, through this action EPA is removing it from the federally approved Georgia SIP. The effect of this action is to remove the Georgia Rule for Air Quality Control, 391–3–1.02(2)(a)1, as a federally enforceable element of the state program to attain and maintain the NAAQs. However, EPA's action does not affect the enforceability of the rule as a matter of state law. Nothing in today's action affects citizens' ability to use state law provisions to enforce the rule in state court.

Comment: The commenter asserts that ''EPA did not provide any supporting documentation in the **Federal Register** to support their contention that the Georgia Rule for Air Quality Control, 391–3–1.02(2)(a)1 is reiterated in Georgia Code Title 41-Nuisance Rule, or that the same protections from the release of hazardous air pollutants listed in CAA Title 1, section 112 can be obtained under the Georgia Nuisance Rule.''

Response: The commenter seems to show some confusion over the two different provisions of the CAA (section 110 and section 112). The commenter also seems to misunderstand the focus of SIPs and section 110 of the CAA. Section 110 focuses on attainment and maintenance of the NAAQS, while section 112 focuses on hazardous air pollutants. A SIP is a mechanism provided under the Act to ensure states attain and maintain national ambient air quality standards. Other provisions of the Act, such as section 112 provide for the direct Federal regulation of hazardous air pollutants. Whether the Georgia rule provides the same or similar protections against hazardous air pollutants as provided under the Federal program provided under section 112 of the Act is not relevant for EPA's determination that the rule should not be included as part of a plan to address the NAAQS.

Comment: Several commenters assert the CAA requires state SIPs to contain enforceable emissions limitations and other control measures as may be necessary or appropriate to meet the applicable requirements and that the intent of the CAA was to provide states flexibility in creating their SIPs, as long as the state's rules and regulations were at least as stringent as the CAA. Furthermore, the commenters assert the proposed rule seeks to overturn the Georgia Rule for Air Quality Control, 391–3–1.02(2)(a)1, which could be interpreted to be more protective of human health than provisions in the CAA.

Response: Section 116 of the CAA states that, ''Nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 111 or 112, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.'' Section 116 of the CAA thus explains that unless pre-empted under one of several

enumerated provisions of the Act, the state may adopt regulations more stringent than those required under the Act. It does not, however, as the commenter suggests, require that any ''more stringent'' state regulations be included as part of the federally enforceable SIP. EPA policy is that nuisance provisions unrelated to attainment and maintenance of the NAAQS should not be included as part of the SIP. (see 64 FR 7790, 66 FR 53657 and 69 FR 54006.)

Comment: Several commenters asserted that ''EPA is overstepping its authority when proposing a rule change without a vote from the governing body, the Georgia Board of Natural Resources, which would also include the public participation provisions in CAA section 110.''

Response: Although the commenters are correct in their assertion that public participation is a prerequisite to SIP revision submissions under the CAA section 110(a)(2), this stipulation applies to implementation plans submitted by a State under the CAA. The proposed correction invokes CAA section 110(k)(6), which states, ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.'' Since the approval of the Georgia Rule for Air Quality Control 391–3–1.02(2)(a)1 into the State of Georgia's SIP was in error, EPA is well within its authority to remove this component from the Georgia SIP without first requiring a SIP submission from the State. On November 29, 2005, notice of the proposed removal of the rule from the state SIP, including a 30-day comment period, was published in the **Federal Register.** On January 13, 2006, the comment period was extended through January 23, 2006.

Comment: The commenter asserts that the proposed rule, published on November 29, 2005 (70 FR 71446), is not supported by documentation of EPA's determination that the Georgia Rule for Air Quality Control, 391–3–1.02(2)(a)1, was erroneously incorporated into the State of Georgia's SIP.

Response: The proposed rule published on November 29, 2005 (70 FR 71446), states, ''since the State's ''nuisance'' provision is not directed at the attainment and maintenance of the NAAQS, EPA has found that its prior approval of this particular rule (into the SIP) was in error.'' This statement was supported by an examination of the SIP and an email exchange with the State, which confirmed that the provision at issue had not been relied on for purposes of attainment or maintenance of any NAAQS. EPA's exclusion from the SIP of a nuisance provision unrelated to attainment and maintenance of the NAAQS is consistent with previous Agency practice. EPA removed nuisance provisions from the SIPs of the State of Michigan, 64 FR 7790, Commonwealth of Kentucky (Jefferson County portion), 66 FR 53657, and the State of Nevada, 69 FR 54006. Additionally, EPA has issued final rules declining to approve nuisance provisions into SIPs. (see 45 FR 73696, 46 FR 11843, 46 FR 26303 and 63 FR 51833.)

Comment: The commenter asserts that the ''rule change proposed in EPA–R04–OAR–2005–GA–0005–0001 is intended to circumvent agency responsibility to implement strategies to address disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income population in Brunswick, Georgia,'' Executive Order 12898—Environmental Justice and Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks.

Response: The CAA aims to ''protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population * * * and to encourage and assist the development and operation of regional air pollution prevention control programs.'' 42 U.S.C. 7401(b)(1). Section 110 of the CAA requires states to adopt a plan which provides for implementation, maintenance, and enforcement of the national ambient air quality standards, including carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter and sulfur oxides. The purpose of this rulemaking action is to remove Georgia Air Quality Control Rule 391–3–1.02(2)(a)1 from the Georgia SIP, because it does not support the attainment and maintenance of the NAAQS. This rulemaking action does not invalidate the Georgia law or affect its applicability to Georgia sources. Facilities located in Georgia are still subject to the state nuisance provision. EPA supports programs and activities that promote enforcement of health and environmental statutes in areas with minority populations and low-income populations and the protection of children. The purpose of the SIP is to address attainment and maintenance of the NAAQS in all areas of the country. Other programs under the CAA address hazardous air pollutants (see CAA section 112). The State of Georgia has adopted Maximum Achievable Control Technology (MACT) and National Emission Standards for Hazardous Air Pollutants (NESHAP) standards that reflect the federal standards, and these standards are enforceable through other mechanisms that do not include the Georgia SIP, which is affected by this rulemaking.

Comment: The commenter asserts that the ''rule change proposed in EPA–R04–OAR–2005–GA–0005–0001, is intended to circumvent Executive Order 12866—Regulatory Planning and Review by not allowing for a comment period of at least 60 days.'' Several commenters requested that the comment period be extended. One commenter requested an extension of 60 days from the date the EPA ''formally notified its legal counsel of the proposed rule,'' which it asserts was on December 15, 2005.

Response: SIPs are rulemakings under the Administrative Procedure Act, which does not specify a period for public comment. However, a 30-day period is consistent with most SIP actions proposed by EPA. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.'' We note that in response to comments received, EPA extended the comment period for the proposed rule change through January 23, 2006. See 71 FR 2177. It should be noted that EPA is not required to notify any entity of its rulemaking actions; notification of all parties is accomplished through publications in the **Federal Register.**

Comment: The commenter asserts that it followed the public participation requirements set forth for the title V permitting process and that through this action to remove 391–3–1–.02(2)(a)1 from the Georgia SIP, EPA is frustrating that process. A commenter further asserts that the purpose of the rule change proposed in EPA–OAR–2005–GA–0005–0001 is to thwart citizen efforts to end hazardous air releases that it claims are a ''threat to our children, our health, and our economy.''

Response: Although title V permits are required to contain conditions that

are necessary to assure compliance with all the applicable requirements of the CAA, including the requirements of the applicable SIP, the title V permit may also contain state-only enforceable requirements. Once the final rule takes effect, Georgia Rule 391–3–1–.02(2)(a)1 will become a state-only enforceable rule that will continue to be applicable to facilities in Georgia. For the reasons provided above, however, EPA believes this action to remove the nuisance provision from the SIP is appropriate.

Comment: The commenter asserts that ''proposed rule R04–OAR–2005–GA–0005–0001 is not supported by documentation of EPA's determination that the rule, Georgia Rule for Air Quality Control, 391–3–1.02(2)(a)1, was erroneously incorporated into the Georgia SIP.'' Furthermore, the commenter alleges that ''without supporting documentation, the EPA's action in adopting this rule is arbitrary and capricious, and violates every aspect of the Administrative Procedures Act.''

Response: In support of its decision to remove Georgia Air Quality Control Rule 391–3–1–.02(2)(a)1 from the Georgia SIP, EPA determined that this is a general nuisance provision that is not related to the attainment and maintenance of the NAAQS. Georgia has never used this rule as part of a federal air quality standard attainment or maintenance plan. In addition, Georgia has not relied on or attributed any emission reductions from this rule to any such plans. 70 FR 71447 (November 29, 2005). In support of these conclusions, EPA relied on an email from Georgia that indicated it had checked its records and made these findings. As explained above, EPA's action to exclude from the SIP a nuisance provision unrelated to attainment or maintenance of any NAAQS is consistent with prior Agency practice.

Comment: The commenter asserts that the Georgia Environmental Protection Division (EPD) has a history of allowing unregulated and unpermitted hazardous air releases from certain facilities. Furthermore, the commenter alleges that some permit applications had remained un-acted upon by the Georgia EPD since 1986, and that without valid permits, emission control equipment operations are not enforceable by either the Georgia EPD or the EPA.

Response: Our action to exclude the nuisance provision from the Georgia SIP does not affect the enforceability of the rule as a matter of state law. The issue of whether Georgia adequately enforces or permits hazardous air pollutants has no bearing on whether the nuisance provision should be part of a plan to attain and maintain standards for NAAQS.

Comment: The commenter questions the legal basis of the proposed action and whether there is a compelling reason to change the rule.

Response: In the **Federal Register** Notice proposing to remove the Georgia nuisance rule, 391–3–1.02(2)(a)1, from the Georgia SIP, 70 FR 71446, EPA cited the basis for its action. First, the Agency explained that the purpose of the SIP is to provide for how the state will attain and maintain the NAAQS. EPA then explained that because the nuisance rule is unrelated to attainment and maintenance of the NAAQS, ''EPA's 1980 approval of this provision into the Georgia SIP was in error and EPA is, therefore, proposing to remove the provision from the approved SIP under the authority of section 110(k)(6) of the CAA. Section 110(k)(6) provides: 'Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.' '' 70 FR 71447 (Nov. 29, 2005).

Comment: The commenter alleges that a ''reasonable person could easily find that the EPA blatantly misrepresented the purpose of the proposed rule change. At a minimum, the EPA is misusing their powers to propose rule changes in the **Federal Register**, and the case might actually be that the information presented in the **Federal Register** is fraudulent.''

Response: EPA vigorously disagrees with the commenter's allegation that the Agency misrepresented, misused, or engaged in any other fraudulent practice in proposing this rule change. As provided above, EPA has an established history of removing and excluding state nuisance rules, which are unrelated to attaining or maintaining the NAAQS, from the SIP.

Comment: The commenter asked how the citizen's petition of a Title V operating permit in Georgia led EPA to find an erroneously approved rule.

Response: The citizen's petition of the Title V operating permit for the Hercules Corporation, in the State of Georgia, specifically cites the Georgia Rule for Air Quality Control, 391–3–1.02(2)(a)1 as a rule of which the Hercules Corporation is in violation. Hence, through this petition, it was brought to EPA's attention that this particular rule was incorporated into the Georgia SIP. Because EPA has concluded that this rule is unrelated to attainment or maintenance of any NAAQS and thus was erroneously approved into the SIP, EPA is using section 110(k)(6), error correction, to remove the rule from the approved SIP.

Comment: A commenter asked whether EPA had done any research to determine how many erroneous laws were approved by the EPA in their rush to approve SIPs.

Response: EPA has many rulemaking and other activities that are required under the CAA or that are otherwise a priority under the Act, and thus has not had the time or resources to perform an extensive review of the SIPs to determine if any rules are erroneously incorporated. However where, through other means errors in the SIPs come to light, it is appropriate for EPA to correct the errors.

Comment: The commenter asserts that the CAA requires states to hold public hearings when revising a SIP and that EPA should hold a public hearing on the removal of the ''nuisance'' rule from the SIP. The commenter also asserts that this is ''particularly troublesome given that the SIP contained the nuisance rule for over 25 years and the proposed elimination was prompted only after a lawsuit was filed regarding the nuisance rule.''

Response: As outlined above, section 110(k)(6) does not require a public hearing when making a correction to a SIP. Section 110(k)(6) of the CAA states that ''whenever'' the Administrator determines that the Administrator's action approving any plan ''was in error,'' the Administrator may in the same manner as the approval, revise such action as appropriate. By this action EPA is removing the provision from the Georgia SIP in the same manner as EPA approves SIPs.

IV. Final Action

Since Georgia Rule 391–3–1–.02(2)(a)1 is not directed at the attainment and maintenance of the NAAQS, EPA has found that its prior approval of this particular rule (into the SIP) was in error. Consequently, in order to correct this error, EPA is removing Georgia Rule 391–3–1–.02(2)(a)1 from the approved Georgia SIP pursuant to section 110(k)(6) of the CAA, and codifying this deletion by revising the appropriate paragraph under 40 CFR part 52, subpart L, section 52.570 (Identification of Plan).

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely corrects an error and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule corrects an error and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely corrects an error, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable VCS. This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 15, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: March 6, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart L—Georgia

■ 2. Section 52.570 is amended in the table to paragraph (c) by revising the entry for ''391–3–1–.02(2)(a) General Provisions'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	* * *	*	*	*
391–3–1–.02(2)(a)	General Provisions	01/09/91	3/16/06 [Insert first page of publication].	Except for paragraph 391–3–1–.02(2)(a)1.
*	* * *	*	*	*

* * * * *

[FR Doc. 06–2479 Filed 3–15–06; 8:45 am]
BILLING CODE 6560–50–P

Attachment 8

requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act (CAA) do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. EPA., 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nitrogen oxide, Ozone, Volatile organic compounds.

Dated: February 2, 1999.

David A. Ullrich,

Acting Regional Administrator, Region V.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(146) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(146) On February 13, 1998, the Illinois Environmental Protection Agency (IEPA) submitted a revision to the Illinois State Implementation Plan (SIP). This revision amends certain sections of the Clean-Fuel Fleet Program (CFFP) in the Chicago ozone nonattainment area to reflect that fleet owners and operators will have an additional year to meet the purchase requirements of the CFFP. The amendment changes the first date by which owners or operators of fleets must submit annual reports to IEPA from November 1, 1998 to November 1, 1999. In addition, this revision corrects two credit values in the CFFP credit program.

(i) Incorporation by reference.

(A) 35 Illinois Administrative Code 241; Sections 241.113, 241.130, 241.140, 241.Appendix B.Table A, 241.Appendix B.Table D adopted in R95–12 at 19 Ill. Reg. 13265, effective September 11, 1995; amended in R98–8, at 21 Ill. Reg. 15767, effective November 25, 1997.

(ii) Other Material.

(A) February 13, 1998, letter and attachments from the Illinois Environmental Protection Agency's Bureau of Air Chief to the United States Environmental Protection Agency's Regional Air and Radiation Division Director submitting Illinois' amendments to the Clean Fuel Fleet regulations as a revision to the ozone State Implementation Plan.

[FR Doc. 99–3522 Filed 2–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI67–02–7275; FRL–6302–3]

Approval and Promulgation of Implementation Plans; Michigan: Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a correction to the State Implementation Plan (SIP) for the State of Michigan regarding the State's emission limitations and prohibitions for air contaminant or water vapor. EPA has determined that Michigan's air quality Administrative Rule, R336.1901 (Rule 901) was erroneously incorporated into the SIP. EPA is removing this rule from the

approved Michigan SIP because the rule does not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the Clean Air Act. The intended effect of this correction to the SIP is to make the SIP consistent with the requirements of the Clean Air Act, as amended in 1990 (''the Act''), regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

EFFECTIVE DATE: This final rule is effective on March 19, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Victoria Hayden at (312) 886–4023 before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Victoria Hayden, Environmental Engineer, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604; Telephone Number (312) 886–4023.

SUPPLEMENTARY INFORMATION: On May 19, 1998, EPA published a direct final rule (63 FR 27492) approving the removal of Rule 901 of the Michigan air quality Administrative Rules from the approved Michigan SIP pursuant to section 110(k)(6) of the Act. The formal SIP correction request was submitted by the Michigan Department of Environmental Quality on January 29, 1998. In the May 19, 1998 direct final rulemaking, EPA stated that if adverse comments were received on the final approval within 30 days of its publication, EPA would publish a document announcing the withdrawal of its direct final rulemaking action. Because EPA received adverse comments on the direct final rulemaking within the prescribed comment period, EPA withdrew the May 19, 1998 final rulemaking action to remove Rule 901 from Michigan's approved SIP. This withdrawal document appeared in the **Federal Register** on July 29, 1998 [63 FR 40370]. A companion proposed rulemaking notice to approve the removal of Rule 901 from Michigan's approved SIP was published in the Proposed Rules section of the May 19, 1998 **Federal Register** (63 FR 27541).

Response to Comments

Several groups submitted letters commenting on the May 19, 1998 direct final rulemaking that were both opposed to and in favor of the removal of Rule 901 from the State of Michigan's approved SIP. About half of the letters received were from community organizations and environmental organizations from across the State that urged EPA to maintain Rule 901 as part of Michigan's approved SIP stating its importance to the citizens of Michigan's health, welfare and quality of life. Other letters received, largely representing industry, supported EPA's May 19, 1998 direct final rulemaking to remove Rule 901. EPA evaluated the comments, which have been incorporated into the docket for the rulemaking. The following discussion summarizes and responds to the comments received.

Comment: It is important to have broad environmental statutes like Rule 901 in the SIP to protect local air quality.

Response: Michigan Rule 901 is a general rule that prohibits the emission of an air contaminant which is injurious to human health or safety, animal life, plant life of significant economic value, property, or which causes unreasonable interference with the comfortable enjoyment of life and property. It is a State rule that has been primarily used to address odors and other local nuisances. Historically, the rule has not been used for purposes of attaining or maintaining any of the National Ambient Air Quality Standards (NAAQS). In accordance with the Clean Air Act, only rules pertaining to the attainment and maintenance of the NAAQS can be lawfully required as part of a SIP.

Comment: Communities need the assistance of federal agencies to challenge State and local authorities to do all that is in their power to reduce pollution in local neighborhoods. One commentor references a particular neighborhood that suffers from heavy odors from surrounding industrial and municipal sources.

Response: The Clean Air Act does not authorize the EPA to specifically require States to adopt rules to address odors and nuisances as part of their SIPs. Only rules that have a reasonable connection to the NAAQS and related air quality goals of the Clean Air Act are required. Rule 901 was never submitted for purposes of attaining or maintaining the NAAQS and was, therefore, incorrectly submitted to EPA for inclusion in the SIP. Although Rule 901 will be removed from the SIP, Rule 901 will remain as a State rule and still be enforceable at the State level. In addition, Michigan has submitted, and EPA has approved, regulations to attain the NAAQS under the Clean Air Act. These regulations are directly related to protecting human health and will continue to be federally enforceable.

Comment: Rule 901 is the only rule that provides basis for enforcement actions related to odor and nuisance offenses. A commentor hopes that the removal of Rule 901 results in a substitute rule that is more relevant and can be readily enforced by the State. Residents of the State of Michigan should have the protection from odors, fumes in high concentrations, blowing dust, and other negative air quality issues that the local and county municipal governments cannot or are unable to enforce because of the cost or because of the lack of expertise or jurisdiction.

Response: As stated previously, the Clean Air Act does not authorize EPA to specifically require the State to develop rules to address odor and nuisance offenses. The Clean Air Act does require States to develop rules to protect public health and welfare. If a pollution source or combination of sources is presenting an imminent and substantial endangerment to public health or welfare, or the environment, the State of Michigan, as well as the EPA, have the ability under section 303 of the Act to take action against that source. Because the Clean Air Act does not require State rules to address odors and nuisances, EPA is approving the removal of Rule 901 from Michigan's approved SIP.

Final Action

The EPA is approving the removal of Rule 901 of the Michigan air quality Administrative Rules from the approved Michigan SIP pursuant to section 110(k)(6) of the Act.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal

government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitle ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effect of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because it removes requirements from the SIP. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

This is an action to remove rules from the Michigan SIP. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 2, 1999.

David A. Ullrich,

Acting Regional Administrator.

40 CFR Part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C 7401–7671q.

Subpart X-Michigan

2. Section 52.1174 is amended by adding paragraph (q) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(q) Correction of approved plan—Michigan air quality Administrative Rule, R336.1901 (Rule 901)—Air Contaminant or Water Vapor, has been removed from the approved plan pursuant to section 110(k)(6) of the Clean Air Act (as amended in 1990).

[FR Doc. 99–3837 Filed 2–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–6233–6]

Approval of the Clean Air Act, Section 112(l), Delegation of Authority to Three Local Air Agencies in Washington; Correction and Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation of authority; correction and clarification.

SUMMARY: This action provides a correction and clarification to a direct final **Federal Register** action published on December 1, 1998 (**see** 63 FR 66054), that granted Clean Air Act, section 112(l), delegation of authority for three local air agencies in Washington to implement and enforce specific 40 CFR parts 61 and 63 federal National Emission Standards for the Hazardous Air Pollutants (NESHAP) regulations which have been adopted into local law. This action corrects several typographical errors in the EPA Action section of the preamble of the December 1, 1998, direct final rule, and also clarifies the extent of that delegation with respect to Indian country.

DATES: This action is effective on February 17, 1999.

ADDRESSES: Copies of the requests for delegation and other supporting documentation are available for public inspection at the following location: U.S. Environmental Protection Agency, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101.

FOR FURTHER INFORMATION CONTACT: Andrea Wullenweber, US EPA, Region X (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553–8760.

SUPPLEMENTARY INFORMATION:

I Administrative Requirements

Under Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore, not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

II Clarification

On December 1, 1998, EPA promulgated direct final approval of the Washington Department of Ecology (Ecology) request, on behalf of three local air agencies, for program approval and delegation of authority to implement and enforce specific 40 CFR parts 61 and 63 federal NESHAP regulations which have been adopted into local law (as apply to both Part 70 and non-Part 70 sources). The three local air agencies that will be implementing and enforcing these regulations are: the Northwest Air Pollution Authority (NWAPA); the Puget Sound Air Pollution Control Agency (PSAPCA); and the Southwest Air Pollution Control Authority (SWAPCA). In the direct final rule and delegation of authority, an explanation of the applicability of that action to sources and activities located in Indian country was inadvertently omitted. Beginning on page 66054, in the issue of Tuesday, December 1, 1998, make the following correction, in the EPA Action section of the preamble, at the end of the Delegation of Specific Standards subsection. On page 66057, in the second column, after the first paragraph, add the following statement:

''The delegation approved by this rule for NWAPA, PSAPCA, and SWAPCA to implement and enforce NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NESHAPs in Indian country because the local air agencies did not adequately demonstrate their authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

The one exception to this limitation is within the boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies, such as PSAPCA, authority over activities on non-trust lands within the 1873 Survey Area. After consulting with the Puyallup Tribe of Indians, EPA's delegation in this rule applies to sources and activities on non-trust lands within the 1873 Survey Area. Therefore, PSAPCA will implement and enforce

Attachment 9

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(78) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(78) Operating Permit requiring VOC RACT for Calgon Corporation in the Kentucky portion of the Ashland/Huntington ozone nonattainment area, submitted November 11, 1994.

(i) Incorporation by reference. Natural Resources and Environmental Protection Cabinet; Kentucky Department for Environmental Protection; Division for Air Quality; Permit 0–94–020; Calgon Carbon Corporation, effective on November 17, 1994.

(ii) Other material. Letter of November 23, 1994, from the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet.

[FR Doc. 95–12617 Filed 5–23–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MN30–1–6215a; FRL–5183–8]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Minnesota submitted a revision intended to simplify and update the rules in its State Implementation Plan (SIP). These revisions included deleting regulations that are redundant with Federal New Source Performance Standards (NSPS) regulations, removing odor regulations and other similar regulations from the SIP, and recodifying the regulations. In the case of open burning, the State requested removal of the regulations from the SIP or, in the alternative, replacing these regulations with statutes that regulate open burning. USEPA is replacing the open burning regulations in the SIP with the new statutes and is approving all other revisions requested by the State.

EFFECTIVE DATE: This action will be effective July 24, 1995 unless adverse or critical comments are received by June 23, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and U.S. EPA's analysis are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Jerry Kurtzweg (6102), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Review of State Submittal

On November 23, 1993, the Minnesota Pollution Control Agency (MPCA) submitted a request to (1) eliminate a number of regulations that need not be included in the Minnesota State Implementation Plan (SIP), (2) recodify the remaining regulations, and (3) make miscellaneous other changes. Each of these types of revisions are discussed in separate sections below.

Elimination of Regulations

MPCA recommended elimination of several categories of regulations from the SIP. The category with the most regulations recommended for elimination are regulations that repeat the requirements for new sources established by the United States Environmental Protection Agency (USEPA) in various New Source Performance Standards (NSPS). Some of these regulations also govern emissions from ''existing sources,'' i.e. sources that existed before the effective date of or otherwise not subject to a relevant NSPS. Most of these regulations were submitted in 1981. In its 1982 rulemaking on these regulations, USEPA approved these regulations only for ''existing sources,'' reflecting concern that these regulations would either be unnecessary by virtue of being redundant with Federal NSPS or be detrimental by virtue of causing uncertainty as to which of conflicting State versus Federal provisions apply. In this context, ''existing sources'' should be considered not only to include sources that existed prior to the effective date of the NSPS but also to include sources that are newer but are not subject to the NSPS due to size or other reasons.

Minnesota's submittal refines the list of rules which, by USEPA's approach, should be removed from the SIP or applied only to ''existing sources.'' In the cases of regulations for portland cement plants, asphalt concrete plants, grain elevators, sulfuric acid plants, and nitric acid plants, the State has specified which portions of the relevant sets of rules regulate new sources and which portions regulate existing sources. In the cases of regulations for lead smelters and brass and bronze plants, there are no existing brass or bronze plants and the only existing lead smelter is subject to a separate more stringent administrative order in the SIP. Therefore, the regulations apply only to new sources and should be eliminated from the SIP in their entirety. In the cases of regulations for incinerators and sewage sludge incinerators, MPCA does not identify portions of the rules that only apply to new sources but comments that USEPA should state that the SIP only includes these rules as they apply to existing sources (which again may include newly constructed sources that are not subject to NSPS). USEPA concurs with Minnesota's list of which of these rules should be removed from the SIP, and is modifying the SIP accordingly.

A second set of regulations recommended for elimination concern odors and acid/base fallout. MPCA's submittal states that these regulations were not intended for purposes of achieving air quality standards or other Clean Air Act purposes and remain unnecessary for such purposes. Specifically, Minnesota requests on this basis that USEPA delete the set of regulations entitled Ambient Odor Control, the set entitled Limits for Animal Matter Odors, and the set entitled Limits on Acid, Base Emissions. These regulations were adopted around 1970 and were submitted and approved as part of a package that included all extant air pollution regulations. USEPA concurs with Minnesota's request and is removing these regulations from the SIP.

A third set of regulations recommended for elimination concern indirect sources. These regulations establish permitting requirements for the facilities such as highways, shopping malls, and airports that attract motor vehicles and thus indirectly cause mobile source emissions. These regulations were submitted in 1981 and approved by USEPA in 1982.

Nevertheless, section 110(a)(5)(A)(iii) of the Clean Air Act (added in 1977) states that ''Any State may * * * suspend or revoke any [indirect source review program], provided the [implementation plan] meets the requirements of [section 110].'' Minnesota is maintaining these regulations as State enforceable requirements, and will continue to implement indirect source review, but the State is seeking to remove these regulations from the federally enforceable SIP. The SIP has been found to meet the requirements of Section 110, and so the criteria in section 110(a)(5)(A)(iii) for removal of the indirect source regulations from Minnesota's SIP have been satisfied. Consequently, USEPA is removing these regulations from the SIP.

A final set of regulations recommended for elimination concern open burning. MPCA explained that the Minnesota Legislature rescinded these air pollution regulations and incorporated similar restrictions into legislation administered by the Minnesota Department of Natural Resources (DNR). MPCA argued that particulate matter emitted from open burning was not found to be significant in the State's development of plans to address the nonattainment areas, and argued that these regulations may be considered to be nuisance regulations rather than particulate matter regulations. Nevertheless, MPCA's submittal states ''If the EPA does not approve the MPCA's request to remove the open burning program from the SIP, then the MPCA requests that the applicable portions of [the current statute that addresses open burning] be incorporated as part of Minnesota's SIP * * *.''

Minnesota's open burning regulations generally prohibit open burning of leaves and other vegetative material, with exemptions for campfires and cooking and exemptions for certain types of burning which may be conducted upon receipt of a permit. Open burning causes emissions most notably of particulate matter and also of carbon monoxide, hydrocarbons, and air toxicants. MPCA has not attempted to analyze the ambient impact of eliminating these restrictions. Available evidence is limited but suggests that the impacts of open burning can be significant. Therefore, absent evidence to the contrary, USEPA finds that open burning should be retained as part of the Minnesota SIP. USEPA further finds that the alternative of revising the SIP by replacing the old regulations with the new statute is fully appropriate. The statute provides essentially the same or better air quality benefits insofar as it provides for more effective administration of similar restrictions. This alternative would remove the open burning program from ''MPCA's regulatory program,'' as requested by MPCA. (This portion of the SIP would be administered by the Minnesota DNR.) Although Minnesota planned in any case to continue the open burning restrictions in force, this alternative would retain these restrictions as part of the Federal SIP, thereby retaining Federal authority to object should the State subsequently wish to end the restrictions. Therefore, USEPA is approving Minnesota's alternative of replacing MPCA regulations with State statutes.

Recodification

MPCA requested that USEPA renumber the rules in the SIP to be consistent with the State's current numbering system. This renumbering itself would not change any of the substance of the requirements included in these rules. USEPA approves this renumbering, to make the SIP consistent with current State rule numbering.

Other Revisions

The most significant other revisions requested by MPCA concern the definitions given in Rule 7005.0100. All of the definitions requested by MPCA are acceptable. However, rulemaking on these revisions is complicated by the interrelationship with other rulemakings on Rule 7005.0100. In USEPA's rulemaking on a prior recodification request (published March 23, 1993, at 58 FR 15433), USEPA chose not to approve post-1985 revisions to Rule 7005.0100 due to their significance to permitting rules which were still under review. Recent rulemaking on a subsequent set of permitting rules approved selected revisions to this rule. Consequently, this submittal includes only a small number of definitions that differ from definitions that have already been approved. Nevertheless, for convenience, USEPA is approving the full set of definitions in Rule 7005.0100 as submitted by MPCA. (Note that Subpart 25a, defining ''National Emissions Standards for Hazardous Air Pollutant,'' was excluded from MPCA's submittal and is therefore excluded from the approved SIP.)

A further significant revision included in MPCA's recodification submittal is an enhancement of requirements for sources to report emissions. (These provisions do not address the requirements in amended section 114 of the Clean Air Act for enhanced compliance monitoring.) USEPA approves this revision, which would replace Rule 7005.1870 (4) with Rules 7019.3000 and 7019.3010.

Rulemaking Action

USEPA is making various revisions in accordance with Minnesota's request. USEPA is recodifying the SIP to reflect the new Minnesota rule numbering. In addition, this action (1) replaces the open burning regulations with the current statutory provisions (rather than removing the restrictions altogether), (2) modifies the delineation of new source limits that are excluded from the SIP, (3) removes the odor regulations and indirect source regulations from the SIP, (4) incorporates the enhanced emission reporting regulations, and (5) makes various other minor revisions requested by MPCA. The codification of this rulemaking delineates the revised SIP. The specific regulations that are revised by this action are discussed in detail in the technical support document for this rulemaking.

This action is being taken without prior proposal because the changes are believed to be noncontroversial and USEPA anticipates no significant comments on them. This action will be effective July 24, 1995 unless adverse or critical comments are received by June 23, 1995.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. §§ 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but

simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from the date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, New source review, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 20, 1995.

David A. Ullrich,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(40) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(40) On November 23, 1993, the State of Minnesota requested recodification of the regulations in its State Implementation Plan, requested removal of various regulations, and submitted recodified regulations containing minor revisions.

(i) Incorporation by reference.

(A) Minnesota regulations in Chapters 7005, 7007, 7009, 7011, 7017, 7019, and 7023, effective October 18, 1993.

(B) Submitted portions of Minnesota Statutes Sections 17.135, 88.01, 88.02, 88.03, 88.16, 88.17, and 88.171, effective 1993.

3. Section 52.1222 is revised to read as follows:

§ 52.1222 EPA-approved Minnesota State regulations.

The following table identifies the State regulations submitted to and approved by EPA as revisions to the Minnesota State Implementation Plan (SIP). This table is for informational purposes only and does not have any independent regulatory effect. This table also does not include administrative orders that have been approved into the SIP. To determine regulatory requirements for a specific situation consult the plan identified in § 52.1220. To the extent that this table conflicts with § 52.1220, § 52.1220 governs.

TABLE 52.1222.—EPA APPROVED REGULATIONS

Rule description	Minnesota rule numbers	Contents of SIP	Effective date	Relevant ¶s in § 52.1220 [1]
Definitions and Abbreviations	7005.0100–.0110	Full rules except def'n of NESHAP.	10/18/93	b,c20,c40.
Air Emission Permits	7007.0050–.1850	Full rules	8/10/93	b,c3,c5, c24,c26,c39.
Offsets	7007.4000–.4030	Full rules	10/18/93	c33.
Ambient Air Quality Standards	7009.0010–.0080	All except 7009.0030 and 7009.0040.	10/18/93	b,c3,c26.
Air Pollution Episodes	7009.1000–.1110	Full rules	10/18/93	c1,c21.
Applicability	7011.0010, .0020	Full rules	10/18/93	b,c20
Opacity	7011.0100–.0120	All except 7011.0120	10/18/93	b,c3,c20.
Fugitive Particulate	7011.0150	Full rules	10/18/93	b.
Indirect Heating Equipment	7011.0500–.0550	Full rules	10/18/93	b,c3,c20,c21
Direct Heating Equipment	7011.0600–.0620	Full rules	10/18/93	c20,c21.
Industrial Process Equipment	7011.0700–.0735	Full rules	10/18/93	b,c20
Portland Cement Plants	7011.0800–.0825	All except 7011.0810	10/18/93	c20,c40.
Asphalt Concrete Plants	7011.0900–.0920	All except 7011.0910	10/18/93	c20,c40.
Grain Elevators	7011.1000–.1015	All except 7011.1005(2)	10/18/93	c20,c25,c40.
Coal Handling Facilities	7011.1100–.1140	All except 7011.1130	10/18/93	c21.
Incinerators	7011.1201–.1207	All rules for "existing sources" [2] .	10/18/93	b,c20,c40.
Sewage Sludge Incinerators	7011.1300–.1325	All rules for "existing sources"	10/18/93	c20,c40
Petroleum Refineries	7011.1400–.1430	All rules for "existing sources"	10/18/93	c20,c21.
Liquid Petroleum and VOC Storage Vessels.	7011.1500–.1515	All rules for "existing sources"	10/18/93	b,c21.
Sulfuric Acid Plants	7011.1600–.1630	All except 7011.1610	10/18/93	b,c3,c21,c40
Nitric Acid Plants	7011.1700–.1725	All except 7011.1710	10/18/93	b,c3,c21,c40.
Inorganic Fibrous Materials	7011.2100–.2105	All rules	10/18/93	c20.
Stationary Internal Combustion Engine.	7011.2300	Entire rule	10/18/93	b,c21.
CEMS	7017.1000	Entire Rule	10/18/93	c20.
Performance Tests	7017.2000	Entire Rule	10/18/93	c20.
Notifications	7019.1000	Entire Rule	10/18/93	c20.
Reports	7019.2000	Entire Rule	10/18/93	c20.
Emission Inventory	7019.3000, .3010	All rules	10/18/93	c20,c40.

TABLE 52.1222.—EPA APPROVED REGULATIONS—Continued

Rule description	Minnesota rule numbers	Contents of SIP	Effective date	Relevant ¶s in § 52.1220 [1]
Motor Vehicles	7023.0100–.0120	All rules	10/18/93	b,c21.
Open Burning	Portions of Chapter 17 and 88 of MN Statutes.	All submitted portions of Sections 17.135, 88.01, 88.02, 88.03, 88.16, 88.17, and 88.171.	1993	b,c21,c26, c40.

[1] Recodifications affect essentially all rules but are shown only for substantively revised rules.
[2] ''Existing'' sources are sources other than those subject to a new source performance standard.

[FR Doc. 95–12619 Filed 5–23–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 180

[PP 3F4233/R2134; FRL–4953–9]

RIN 2070–AB78

Bromoxynil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a time-limited tolerance, to expire on April 1, 1997, for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from the application of its octanoic and heptanoic acid esters in or on the raw agricultural commodity (RAC) cottonseed (transgenic BXN varieties only) at 0.04 part per million (ppm). Rhone-Poulenc AG Co. submitted petitions requesting EPA to establish the maximum permissible residue of the herbicide in or on the RAC.

EFFECTIVE DATE: This regulation becomes effective May 24, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 3F4233/R2134], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and requests for hearings filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies and requests for hearings must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and requests for hearings will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and requests for hearings in electronic form must be identified by the docket number [PP 3F4233/R2134]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and requests for hearings on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 29, 1995 (60 FR 16111), EPA issued a proposed rule that gave notice that the Rhone-Poulenc AG Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition, PP 3F4233, to EPA proposing to amend 40 CFR 180.324 by establishing a regulation to permit residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from the application of its octanoic and heptanoic acid esters in or on the raw agricultural commodity (RAC) transgenic cottonseed at 0.04 ppm. There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The tolerance will expire on April 1, 1997. Based upon the evaluation of a mouse carcinogenicity study currently under review and submission of an analytical method, residue data, and livestock metabolism study on the metabolite, the Agency will determine whether establishing permanent tolerances is appropriate. Residues remaining in or on the raw agricultural commodity after expiration of this tolerance will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the conditional registration.

There were no negative comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited tolerance will protect the public health. Therefore, the time-limited tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

Attachment 10

flap fittings at wing station (WS) 123.38, in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995.

(1) If no cracking or damage is found, and the flap fittings have not been modified or replaced, repeat the visual inspection thereafter at intervals not to exceed 800 hours time-in-service.

(2) If any cracking is found, prior to further flight, replace the flap fittings with new improved flap fittings, and install improved bushings, in accordance with the Accomplishment Instructions (Modification 2628—Part 3) of the service bulletin. After this modification is accomplished, no further action is required by this AD.

(b) Within 4,500 hours time-in-service after the effective date of this AD, perform an inspection to determine the size of the inboard and outboard holes (swaged bushings) of the flap fittings, and to detect loose swaged bushings, in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995.

(1) If the sizes of the holes are within the limits specified in the service bulletin, and if no loose swaged bushings are found, prior to further flight, install improved bushings in accordance with the Accomplishment Instructions (Modification 2628—Part 1) of the service bulletin. After this modification is accomplished, no further action is required by this AD.

(2) If the size of any hole is outside the limits specified in the service bulletin, or if any loose swaged bushing is found, prior to further flight, install oversize bushings in the flap fittings, and install improved bushings, in accordance with the Accomplishment Instructions (Modification 2628—Part 2) of the service bulletin. After this modification is accomplished, no further action is required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections, replacement, and installations shall be done in accordance with Saab Service Bulletin SAAB 340–57–027, Revision 01, dated June 30, 1995. This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of January 27, 1997 (61 FR 66885, December 19, 1996). Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment is effective January 27, 1997.

Issued in Renton, Washington, on January 14, 1997.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–1439 Filed 1–21–97; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 150; PR4–2, FRL–5675–1]

Approval and Promulgation of Implementation Plans; Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the approval of revisions to the Puerto Rico ''Regulations for the Control of Atmospheric Pollution,'' submitted to EPA by the Puerto Rico Environmental Quality Board (EQB) on September 29, 1995. This action approves revisions to Rules 102, 105, 106, 107, 109, 110, 111, 114, 117, 121, 201, 203, 204, 205, 206, 209, 301, 401, 402, 403, 404, 405, 406, 408, 409, 410, 412, 413, 414, 417, and 501. At the request of EQB, EPA will be taking final action on Rules 112 and 211 at a later date. EPA is not incorporating new Rule 422 into the federally approved Puerto Rico State Implementation Plan (SIP). EPA is also withdrawing Rules 411, 418, 419, 420 and 421 from the Puerto Rico SIP at the request of the EQB. However, although requested by the EQB, EPA is not withdrawing Rule 404 from the SIP. In addition, EPA is adding a new section to the Code of Federal Regulations which clearly identifies those Puerto Rico regulations which are a part of the SIP.

EFFECTIVE DATE: This rule is effective February 21, 1997.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

Environmental Protection Agency, Region II Caribbean Field Office Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, Santurce, Puerto Rico 00909

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Environmental Engineer, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: On June 21, 1996 (61 FR 31886), EPA published, in the Federal Register, a proposed rulemaking concerning revisions to the Puerto Rico ''Regulations for the Control of Atmospheric Pollution'' (the Regulations). On September 29, 1995, the Puerto Rico Environmental Quality Board (EQB) submitted to EPA a request for approval of revisions to the Puerto Rico Regulations. Included in that request were revisions to the general Regulations, regulations needed to support the Title V of the Clean Air Act (Act) Operating Permits Program, revisions to the Puerto Rico PM_{10} SIP for the Municipality of Guaynabo, and, a request that certain rules of the Regulations which are currently included as part of Puerto Rico's approved SIP be withdrawn from the SIP. However, these regulations will remain enforceable by Puerto Rico. Also included, was a regulation concerning Hazardous Air Pollutants (HAPs) to be approved by EPA under section 112(l) of the Act. Under the context of the Act, the Commonwealth of Puerto Rico is regarded as a state.

The revisions and rationale for EPA's approval and rulemaking actions were explained in the June 21, 1996 proposal and will not be restated here. The reader is referred to the proposal for a detailed explanation of Puerto Rico's SIP revision.

In response to EPA's proposed approval of Puerto Rico's SIP revision, comments were received from eight interested parties. The commenters are as follows: American Petroleum Institute [A], Puerto Rico Sun Oil Company [B], Schering-Plough Corporation [C], Puerto Rico Manufacturers Association [D], Pharmaceutical Research and Manufacturers of America [E], Ford Motor Company [F], National Environmental Development Association [G], Texaco Inc. [H]. All of the comments received were of a similar

nature. The comments and EPA's responses are listed below.

Comment

Among the changes to the Puerto Rico SIP proposed to be adopted by EPA is an amendment to Rule 112, ''Compliance Determination/Certification,'' of the Puerto Rico Regulations which provides that ''any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of the Puerto Rico SIP and that certain information will constitute presumptively credible evidence of whether a violation has occurred.''

The use of other ''credible evidence'' has been recognized under the Act, but specifically limited to penalty calculations as evidence of the duration of a violation proven through the use of approved reference test methods. Consequently, the commenters assert that the proposed revision in question affecting Rule 112 is not consistent with, nor required or supported by the Act and its legislative history. Absent a legal foundation to support the inclusion of the ''credible evidence'' provision of Rule 112, the commenter objected to its proposed incorporation into the SIP. EPA should withhold taking any final action regarding Rule 112. [A,B,C,D,E,F,G,& H]

Response

Puerto Rico's Rule 112 was adopted in response to EPA's SIP requirement notification that was issued in conjunction with the release of EPA's Enhanced Monitoring (EM) rule which was proposed on October 22, 1993 (58 FR 54648). However, adverse comments were received with respect to EPA's EM proposed rule. EPA has developed a Compliance Assurance Monitoring (CAM) rule to replace the EM rule. EPA announced the availability of the draft in September 1995 and a revised version on August 13, 1996 (61 FR 41991). EPA anticipates proposing the CAM rule by December 1996 and promulgating it by July 1997. The August 13, 1996 Federal Register notice states that the rulemaking on the credible evidence provisions as proposed originally in October 22, 1993 is expected to be finalized ahead of the CAM rule, in December 1996. EQB formally requested, in an October 4, 1996 letter, that EPA delay approval of Rule 112 until EPA promulgates the credible evidence rule and/or the CAM rule. This would allow EPA and EQB to further evaluate Rule 112 to determine if it meets EPA's final requirements. Therefore, EPA concurs with EQB's request that EPA withhold taking final action on Puerto Rico's revision to Rule 112 until EQB submits a future request.

Comment

Upon the adoption and promulgation of Rule 211, ''Synthetic Minor Source Emissions'' by EQB, EQB issued Resolution R–96–13–4 on March 26, 1996 clarifying the underlying intended purpose of the rule. EPA should incorporate the clarifications made by EQB regarding this rule, as drafted in EQB's Resolution R–96–13–4, in order that the synthetic minor source provisions of the Puerto Rico SIP be interpreted consistent with its underlying intended scope and extent. [D]

Response

EQB informed EPA in an October 4, 1996 letter of its intent to change the definition of ''Minor Source (for the purpose of Rule 211)'' in Rule 102, ''Definitions'' of the Regulations, to delete the exclusion which provides that sources subject to a New Source Performance Standards or National Emission Standard for Hazardous Air Pollutants cannot be considered minor sources for the purpose of limiting potential emissions of criteria pollutants. Because EQB has informed EPA of this plan to revise the Regulation pursuant to the Resolution R–96–13–4, EQB and EPA have agreed to withhold taking final action on Rule 211 until it is further revised by EQB and submitted to EPA as a SIP revision. Similarly, EPA is withholding action on Rule 211 to the extent that it would be a method to provide sources with a mechanism to limit potential HAP emissions under 112(l) of the Act. EPA will address this when EQB submits the revised regulation defining minor source for purposes of Rule 211 for EPA approval. Therefore, EPA concurs with EQB's request that EPA withhold taking final action on Puerto Rico's revision to Rule 211 until EQB submits a future request.

Conclusion

EPA is approving revisions to Rules 102, 105, 106, 107, 109, 110, 111, 114, 117, 121, 201, 203, 204, 205, 206, 209, 301, 401, 402, 403, 404, 405, 406, 408, 409, 410, 412, 413, 414, 417, and 501 of the Puerto Rico Regulations. As requested by the EQB, final action on Rules 112 and 211 will be delayed until issues associated with these rules are resolved by EQB and EPA. In addition, EPA is not incorporating new Rule 422 into the federally approved Puerto Rico SIP. EPA is also withdrawing Rules 411, 418, 419, 420 and 421 from the Puerto Rico SIP at the request of the EQB. Although requested by the EQB, EPA is not withdrawing Rule 404 from the SIP.

Additionally, a new § 52.2723 of the Code of Federal Regulations, ''EPA—approved Puerto Rico regulations,'' is being promulgated in the regulatory section at the end of this action. This new section identifies all Puerto Rico regulations approved by EPA as part of the Puerto Rico SIP, the dates when the regulations were made effective by the Commonwealth, and the dates (and Federal Register citation) when they were last approved by EPA for incorporation into the Puerto Rico SIP.

New § 52.2723 also includes regulations which were previously approved by EPA. Puerto Rico's September 28, 1995 SIP submittal consisted of the compiled air regulations which included regulations that had not been changed, however, these rules have been given a new Commonwealth effective date. Therefore, EPA is listing them in § 52.2723 under a new Commonwealth effective date and new EPA approval date.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not

create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 13, 1996.

William J. Muszynski,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BBB—Puerto Rico

2. Section 52.2720 is amended by adding paragraph (c)(36) to read as follows:

§ 52.2720 Identification of plan.

* * * * *

(c) * * *

(36) Revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution (the Regulations) submitted on September 29, 1995 by the Puerto Rico Environmental Quality Board (EQB).

(i) Incorporation by reference.

(A) Regulations:

(*1*) Amendments to Part I, ''General Provisions'', Rules 102, 105, 106, 107, 109, 110, 111, 114, 117, and 121, effective September 28, 1995.

(*2*) Amendments to Part II, ''Approval and Permit'', Rules 201, 203, 204, 205, 206, and 209, effective September 28, 1995.

(*3*) Amendments to Part III, ''Variance'', Rule 301, effective September 28, 1995.

(*4*) Amendments to Part IV, ''Prohibitions'', Rules 401, 402, 403, 404, 405, 406, 408, 409, 410, 412, 413, 414, and 417, effective September 28, 1995.

(*5*) Amendments to Part V, ''Fees'', Rule 501, effective September 28, 1995.

(ii) Additional information.

(A) Request by EQB to remove Rules 411, 418, 419, 420 and 421 of Part IV, ''Prohibitions'' of the Regulations from the federally approved SIP dated September 29, 1995.

(B) An October 4, 1996 letter from EQB to EPA requesting that EPA delay approval of Rules 112 and 211.

3. A new § 52.2723 is added to Subpart BBB to read as follows:

§ 52.2723 EPA—approved Puerto Rico regulations.

REGULATION FOR THE CONTROL OF ATMOSPHERIC POLLUTION

Puerto Rico regulation	Commonwealth effective date	EPA approval date	Comments
PART I, GENERAL PROVISIONS			
Rule 101—Title	9/28/95	[Insert date of publication and FR page citation.]	
Rule 102—Definitions	9/28/95	.....do.	
Rule 103—Source Monitoring, Recordkeeping, Reporting, Sampling and Testing Methods.	9/28/95	.....do.	
Rule 104—Emission Data Available to Public Participation.	9/28/95	.....do.	
Rule 105—Malfunction	9/28/95	.....do.	
Rule 106—Test Methods	9/28/95	.....do.	

REGULATION FOR THE CONTROL OF ATMOSPHERIC POLLUTION—Continued

Puerto Rico regulation	Commonwealth effective date	EPA approval date	Comments
Rule 107—Air Pollution Emergencies	9/28/95	.....do.	
Rule 108—Air Pollution Control Equipment	9/28/95	.....do.	
Rule 109—Notice of Violation	9/28/95	.....do.	
Rule 110—Revision of Applicable Rules and Regulations.	9/28/95	.....do.	
Rule 111—Applications, Hearings, Public Notice	9/28/95	.....do.	
Rule 113—Closure of a Source	9/28/95	.....do.	
Rule 114—Compulsory and Optional Hearing	9/28/95	.....do.	
Rule 115—Punishment	9/28/95	.....do.	
Rule 116—Public Nuisance	9/28/95	.....do.	
Rule 117—Overlapping or Contradictory Provisions	9/28/95	.....do.	
Rule 118—Segregation and Combination of Emissions	9/28/95	.....do.	
Rule 119—Derogation	9/28/95	.....do.	
Rule 120—Separability Clause	9/28/95	.....do.	
Rule 121—Effectiveness	9/28/95	.....do.	
PART II, APPROVAL AND PERMIT			
Rule 201—Location Approval	9/28/95	.....do.	
Rule 202—Air Quality Impact Analysis	9/28/95	.....do.	
Rule 203—Permit to Construct a Source	9/28/95	.....do.	
Rule 204—Permit to Operate a Source	9/28/95	.....do.	
Rule 205—Compliance Plan for Existing Emission Sources.	9/28/95	.....do.	
Rule 206—Exemptions	9/28/95	.....do.	
Rule 207—Continuing Responsibility for Compliance	9/28/95	.....do.	
Rule 208—Agricultural Burning Authorized	9/28/95	.....do.	
Rule 209—Modification of the Allowed Sulfur-in-Fuel Percentage.	9/28/95	.....do.	
Rule 210—(Reserved) Part III, ''Variance''.			
PART III, VARIANCE			
Rule 301—Variances Authorized	9/28/95	.....do.	
Rule 302—Emergency Variances	9/28/95	.....do.	
PART IV, PROHIBITIONS			
Rule 401—Generic Prohibitions	9/28/95	.....do.	
Rule 402—Open Burning	9/28/95	.....do.	
Rule 403—Visible Emissions	9/28/95	.....do.	
Rule 404—Fugitive Emissions	9/28/95	.....do.	
Rule 405—Incineration	9/28/95	.....do.	
Rule 406—Fuel Burning Equipment	9/28/95	.....do.	
Rule 407—Process Sources	9/28/95	.....do.	
Rule 408—Asphaltic Concrete Batching Plants	9/28/95	.....do.	
Rule 409—Non-Process Sources	9/28/95	.....do.	
Rule 410—Maximum Sulfur Content in Fuels	9/28/95	.....do.	
Rule 412—Sulfur Dioxide Emissions: General	9/28/95	.....do.	
Rule 413—Sulfuric Acid Plants	9/28/95	.....do.	
Rule 414—Sulfur Recovery Plants	9/28/95	.....do.	
Rule 415—Non-Ferrous Smelters	9/28/95	.....do.	
Rule 416—Sulfite Pulp Mills	9/28/95	.....do.	
Rule 417—Storage of Volatile Organic Compounds	9/28/95	.....do.	
Rule 423—Limitations for the Guaynabo PM_{10} Nonattainment Area.	4/2/94	5/31/95; 60 FR 28333.	
PART V, FEES			
Rule 501—Permit Fees	9/28/95	.....do.	
Rule 502—Excess Emission Fees	9/28/95	.....do.	
Rule 503—Test Fees	9/28/95	.....do.	
Rule 504—Modification	9/28/95	.....do.	

Attachment 11

(4) New Rule 460.4, adopted on September 19, 1991.

* * * * *

[FR Doc. 94–1059 Filed 1–14–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MT9–1–6134 & MT13–1–6133; FRL–4807–5]

Clean Air Act Approval and Promulgation of PM_{10} Implementation Plan for Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA approves the State implementation plan (SIP) submitted by the State of Montana to achieve attainment of the National ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The SIP was submitted by Montana to satisfy certain Federal requirements for an approvable moderate nonattainment area PM_{10} SIP for Missoula. In this final rule, EPA also approves the Missoula City-County Air Pollution Control Program, except several rules regarding emergency procedures, permitting, open burning, wood-waste burners, new source performance standards, hazardous air pollutant standards, and variances. EPA will propose separate action on these rules when the State fulfills its related commitments. One commitment has been fulfilled (see the This Action section of this document for more information). If the State fails to fulfill the remainder of its commitments, EPA will take appropriate action. Further, EPA is declining to take action on Missoula's odor provisions.

EFFECTIVE DATE: This rule will become effective on February 17, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405; Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620–0901; and Mr. Jerry Kurtzweg, ANR–443, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 293–1769.

SUPPLEMENTARY INFORMATION:

I. Background

The Missoula, Montana area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991); 40 CFR 81.327 (Missoula and vicinity). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.

EPA has issued a "General Preamble" describing its preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this final action and the supporting rationale.

Those States containing initial moderate PM_{10} nonattainment areas (i.e., those areas designated nonattainment for PM_{10} under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modelling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 that become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–13544.

On September 15, 1993, EPA announced its proposed approval of the Missoula, Montana moderate nonattainment area PM_{10} SIP, including parts of the Missoula City-County Air Pollution Control Program, as meeting those moderate nonattainment area PM_{10} SIP requirements due on November 15, 1991 (58 FR 48339–48343). In that proposed rulemaking action and related Technical Support Document (TSD), EPA described in detail its interpretations of title I and its rationale for proposing to approve the Missoula moderate nonattainment area PM_{10} SIP, taking into consideration the specific factual issues presented.

EPA requested public comments on all aspects of the proposal (please reference 58 FR 48343), and comments from the State of Montana and Stone Container Corporation were received during the comment period, which ended on October 15, 1993. (For further discussion of these public comments, please see below and the Addendum to the TSD for EPA's proposed rulemaking action on this SIP.) This final action on the Missoula moderate nonattainment area PM_{10} SIP, and portions of the Missoula City-County Air Pollution Control Program, is unchanged from the September 15, 1993 proposed approval action, except for two typographical errors noted by EPA. First, in the table describing sources, controls, emission reductions, and effective dates, the effective date for the Louisiana-Pacific permit modification should have been listed as March 20, 1992 instead of January 23, 1992, as indicated. Second, under the Enforceability Issues section, the final modification date for Stone

[1] The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM_{10} National Ambient Air Quality Standards (see Public Law No. 101-549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended ("the Act"), 42 U.S.C. 7401, *et seq.*

Container Corporation's air quality permit #2589-M should have been January 23, 1992 instead of November 25, 1992, as indicated.

The discussion herein provides only a broad overview of the proposed action EPA is now finalizing. The public is referred to the September 15, 1993 proposed rule for a more in-depth discussion of the action now being finalized.

II. Response to Comments

EPA did not receive any adverse public comments regarding its September 15, 1993 proposed approval of the Missoula moderate nonattainment area PM_{10} SIP (58 FR 48339–48343). However, the State of Montana submitted comments for clarification purposes, and Stone Container Corporation submitted comments to express general support for EPA's action. Comments were as follows.

In a letter dated September 24, 1993 from Jeff Chaffee, Montana Department of Health and Environmental Sciences, to Amy Platt, EPA, and through verbal communications, the State indicated that since submitting the original moderate nonattainment area PM_{10} SIP for Missoula, it discovered a minor arithmetic error in its 24-hour attainment and maintenance demonstrations, as well as an error in the way it had addressed background concentrations in both the 24-hour and annual attainment and maintenance demonstrations. The background concentrations, i.e., naturally occurring PM_{10} concentrations that cannot be controlled, had not been subtracted from the 24-hour and annual design values before apportioning the credits derived from the outlined control measures. The State has corrected these calculations, and with the adjustments, the 24-hour and annual attainment values (i.e., ambient PM_{10} air quality levels achieved by 1995 [2]) are as follows: 143.8 $\mu g/m^3$ and 44.7 $\mu g/m^3$, respectively. (Before these adjustments, the 24-hour and annual attainment values were 142.1 $\mu g/m^3$ and 45.3 $\mu g/m^3$, respectively.) The adjusted 24-hour and annual maintenance values (i.e., ambient PM_{10} air quality levels maintained through January 1, 1998) are 147.0 $\mu g/m^3$ and 45.5 $\mu g/m^3$, respectively. (Before these adjustments, the 24-hour and annual maintenance values were 145.2 $\mu g/m^3$ and 46.2 $\mu g/m^3$, respectively.)

Since these corrected calculations are based on properly handling the background concentration and since the adjusted values still adequately demonstrate attainment and maintenance of the PM_{10} NAAQS and do not represent major changes to those considered in EPA's proposed action, EPA is proceeding with its approval of this SIP. There is no need to adopt additional control measures based on these adjusted calculations.

Comments were also received in an October 11, 1993 letter from Larry Weeks, Stone Container Corporation, to Amy Platt, EPA. The comments were not adverse and expressed general support for EPA's action on the Missoula PM_{10} SIP. However, several of Stone Container's comments indicate a misunderstanding of EPA's intended action on this SIP and need further explanation.

First, EPA did not propose to approve the odor control rules contained in the SIP submittal and Stone Container communicated its support but referenced "Montana's odor control rules." EPA's action regarding odor regulations applies specifically to the Missoula City-County regulation (Chapter IX, Subchapter 14, Rule 1427) contained in the SIP submittal.

Second, Stone Container submitted comments suggesting it viewed the reduction in allowable PM_{10} emissions from its No. 5 recovery boiler as voluntary reductions. Stone Container's recovery boilers were identified by chemical mass balance receptor modelling to contribute 8.1% of the PM_{10} ambient concentrations in Missoula. The SIP submittal demonstrated that Stone Container is contributing to the PM_{10} nonattainment problem in the Missoula and vicinity nonattainment area and that reductions in allowable emissions from recovery boiler No. 5 are part of an enforceable permit that are necessary to demonstrate expeditious attainment of the PM_{10} NAAQS in the area. EPA agrees with the State's judgement that the reduction in allowable emissions from recovery boiler No. 5 is necessary to ensure expeditious attainment of the PM_{10} NAAQS in the area. EPA's final approval of this limitation means that it will become part of the federally enforceable implementation plan. See, e.g., sections 113 and 302(q) of the Act.

Next, Stone Container commented that because EPA proposed to approve the control requirement exclusion for major stationary sources of PM_{10} precursors authorized by section 189(e) of the Act, it would not make sense for the SIP to include contingency measures that would call for limitations on industrial sources. Contingency measures for moderate PM_{10} nonattainment areas are due to EPA no later than November 15, 1993 and were not submitted by the State as part of the SIP revisions being addressed in this action. Thus, this comment is misplaced and does not address a matter within the scope of the September 15, 1993 proposed action on the SIP submittals for the Missoula area. For clarification purposes, EPA simply notes that EPA's finding that major sources of PM_{10} precursors do not contribute significantly to PM_{10} levels in excess of the NAAQS in Missoula addresses PM_{10} precursors only. Note that this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. Stone Container has been shown to be currently contributing to primary PM_{10} emissions in Missoula.

Finally, since Stone Container has been shown to contribute to the PM_{10} ambient concentrations in Missoula, contingency measures that include limitations on its emissions could be sought by the State. Although Stone Container is located outside the nonattainment area, it is still a contributing source (approximately 8% of the PM_{10} ambient concentrations in Missoula). Therefore, it may be necessary and reasonable to include emission reductions at Stone Container as part of the contingency measures for Missoula. EPA will reserve judgement on the adequacy of any contingency measures submitted by the State until such time as EPA receives a contingency measure submittal and provides public notice and opportunity for public comment on its adequacy.

This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). The Governor of Montana submitted the Missoula PM_{10} SIP with a letter dated June 4, 1992, and requested that EPA take action on the June 4, 1992 submittal together with the August 20, 1991 submittal of the Missoula City-County Air Pollution Control Program. The submittals taken together were intended to satisfy those moderate nonattainment area PM_{10} SIP requirements due for Missoula on November 15, 1991. As described in EPA's proposed action on this SIP (58 FR 48339–48343, September 15, 1993), the Missoula moderate nonattainment area PM_{10} plan includes, among other

[2] The Clean Air Act calls for attainment by December 31, 1994. Section 188(c)(1). EPA interprets the State's demonstration as providing for attainment by January 1, 1995. EPA is approving the State's demonstration on the basis of the de minimis differential between the two dates.

things, a comprehensive and accurate emissions inventory, control measures that satisfy the RACM requirement, a demonstration (including air quality modelling) that attainment of the PM_{10} NAAQS will be achieved by January 1, 1995 (see footnote #2), provisions for meeting the November 15, 1994 quantitative milestone and reasonable further progress, and enforceability documentation. Further, EPA proposed to determine that major sources of precursors of PM_{10} do not contribute significantly to PM_{10} levels in excess of the NAAQS in Missoula.[3] Please refer to EPA's notice of proposed rulemaking (58 FR 48339) and the TSD for that action for a more detailed discussion of these elements of the Missoula plan.

In this final rulemaking, EPA announces its approval of those elements of the Missoula, Montana moderate nonattainment area PM_{10} SIP that were due on November 15, 1991, and submitted on August 20, 1991 and June 4, 1992. In this final action, EPA is also announcing its approval of the Missoula City-County Air Pollution Control Program regulations (which were submitted on August 20, 1991 and June 4, 1992) except for the following provisions: Chapter IX–Subchapter 4, Emergency Procedures; Subchapter 11, Permit, Construction & Operation of Air Contaminant Sources; Subchapter 13, Open Burning; Subchapter 14, Rule 1407, Wood-Waste Burners, Rule 1423, Standard of Performance for New Stationary Sources (NSPS), Rule 1424, Emission Standards for Hazardous Air Pollutants (NESHAPs), and Rule 1427, Control of Odors in Ambient Air; and Chapter X, Variances. EPA described the deficiencies associated with these rules in its notice of proposed rulemaking and the TSD for that action.

EPA finds that the State of Montana's PM_{10} SIP for the Missoula moderate nonattainment area meets the Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), requirement. Five sources/source categories were identified as contributing to the PM_{10} nonattainment problem in Missoula and, therefore, were targeted for control in the SIP. The State has demonstrated that by applying control measures to area sources (re-entrained road dust, residential wood combustion, prescribed burning, and motor vehicle exhaust), as well as reducing allowable emissions through air quality permit modifications for Louisiana-Pacific and Stone Container, Missoula will be in attainment by January 1, 1995 (see footnote #2). It does not appear that applying further control measures to these sources would expedite attainment. EPA views the following measures as reasonable, enforceable, and responsible for significant PM_{10} emissions reductions in Missoula: (a) Missoula County Rule 1401(7), which sets sanding and chip sealing standards and street sweeping and flushing requirements; (b) Missoula County Rule 1401(9), which establishes liquid de-icer requirements; (c) industry permit modifications made to reduce allowable PM_{10} emissions from Stone Container Corporation's recovery boiler No. 5 and Louisiana-Pacific Corporation's particle board dryers; and (d) the Federal tailpipe standards, which provide an ongoing benefit due to fleet turnover. Further, although no credit was claimed in the SIP, EPA is approving the following measures to make them federally enforceable and to further strengthen the SIP. The measures provide additional PM_{10} air quality protection. These measures are: (a) Missoula County Rule 1428, which sets standards for the regulation for solid fuel burning devices; and (b) Missoula County Rule 1310(3), which sets standards for the regulation of prescribed wildland open burning.

A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation of why certain available control measures were not implemented, can be found in the TSD accompanying EPA's proposed approval of the Missoula moderate PM_{10} nonattainment area SIP (58 FR 48339–48343). EPA has reviewed the State's documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Montana's PM_{10} nonattainment plan for Missoula will result in the attainment of the PM_{10} NAAQS by January 1, 1995 (see footnote #2). By this notice EPA is approving the Missoula PM_{10} moderate nonattainment area plan's control measures as satisfying the RACM, including RACT, requirement.

As noted, EPA did not propose approval, nor is EPA taking final action, on some portions of the Missoula City-County Air Pollution Control Program regulations. To address EPA-identified deficiencies in the Missoula and statewide SIP, the State committed to complete additional tasks to correct these deficiencies (except the concerns EPA raised regarding the variance provisions). A more detailed explanation of the State's commitments can be found in EPA's September 15, 1993 proposed approval of the Missoula moderate nonattainment area PM_{10} SIP (58 FR 48339–48343) and the TSD for that action). Since none of the rules associated with these commitments has an impact on the attainment demonstration, credited control strategies in the Missoula PM_{10} SIP, or other Federal Clean Air Act SIP requirements for the Missoula moderate PM_{10} nonattainment area due to EPA on November 15, 1991, EPA will take separate action, as appropriate, when such commitments are fulfilled by the State, and also will address the variances chapter at that time. Further, EPA is declining to take action on Chapter IX, Subchapter 14: Rule 1427, Control of Odors in Ambient Air. These odor provisions do not have a reasonable connection to the NAAQS-related air quality goals of the Clean Air Act.

The State has fulfilled one commitment to revise its NSPS and NESHAPs regulations to incorporate all Federal requirements promulgated through July 1, 1992. In a March 9, 1993 submittal, the State satisfied this commitment, and EPA will announce its action on these revisions in a separate notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for a revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Final Action

This document announces EPA's final action on the action proposed at 58 FR 48339. As noted elsewhere in this final action, EPA received no adverse public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities

[3] The consequences of this finding are to exclude these sources from the applicability of PM_{10} nonattainment area control requirements. Note that EPA's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on a substantial number of small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 21, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be file, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order (EO) 12866

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, and Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 3, 1993.

Kerrigan Clough,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(30) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(30) The Governor of Montana submitted a portion of the requirements for the moderate nonattainment area PM_{10} State Implementation Plan (SIP) for Missoula, Montana, and the Missoula City-County Air Pollution Control Program regulations with letters dated August 20, 1991 and June 4, 1992. The submittals were made to satisfy those moderate PM_{10} nonattainment area SIP requirements due for Missoula on November 15, 1991.

(i) Incorporation by reference.

(A) Stipulation signed April 29, 1991 between the Montana Department of Health and Environmental Sciences and the Missoula City-County Air Pollution Control Board, which delineates responsibilities and authorities between the two entities.

(B) Board order issued on June 28, 1991 by the Montana Board of Health and Environmental Sciences approving the comprehensive revised version of the Missoula City-County Air Pollution Control Program.

(C) Board order issued on March 20, 1992 by the Montana Board of Health and Environmental Sciences approving the amendments to Missoula City-County Air Pollution Control Program Rule 1401, concerning the use of approved liquid de-icer, and Rule 1428, concerning pellet stoves.

(D) Missoula County Rule 1401 (7), effective June 28, 1991, which addresses sanding and chip sealing standards and street sweeping and flushing requirements.

(E) Missoula County Rule 1401 (9), effective March 20, 1992, which addresses liquid de-icer requirements.

(F) Missoula County Rule 1428, effective June 28, 1991, with revisions to sections (2)(l)-(p), (4)(a)(i), and (4)(c)(vi) of Rule 1428, effective March 20, 1992, which addresses requirements for solid fuel burning devices.

(G) Missoula County Rule 1310 (3), effective June 28, 1991, which addresses prescribed wildland open burning.

(H) Other Missoula City-County Air Pollution Control Program regulations effective June 28, 1991, as follows: Chapter I. Short Title; Chapter II. Declaration of Policy and Purpose; Chapter III. Authorities for Program; Chapter IV. Administration; Chapter V. Control Board, Meetings-Duties-Powers; Chapter VI. Air Quality Staff; Chapter VII. Air Pollution Control Advisory Council; Chapter VIII. Inspections; Chapter IX., Subchapter 7 General Provisions; Chapter IX., Subchapter 14, Emission Standards, Rules 1401, 1402, 1403, 1404, 1406 (with amendments effective March 20, 1992), 1411, 1419, 1425, and 1426; Chapter XI. Enforcement, Judicial Review and Hearings; Chapter XII. Criminal Penalties; Chapter XIII. Civil Penalties; Chapter XIV. Non-Compliance Penalties; Chapter XV. Separability Clause; Chapter XVI. Amendments and Revisions; Chapter XVII. Limitations, and Appendix A, Maps.

(ii) Additional material.

(A) Montana Department of Health and Environmental Sciences Air Quality Permit #2303-M, with a final modification date of March 20, 1992, for Louisiana-Pacific Corporation's particle board manufacturing facility.

(B) Montana Department of Health and Environmental Sciences Air Quality Permit #2589-M, with a final modification date of January 23, 1992, for Stone Container Corporation's pulp and paper mill facility.

(C) Federal tailpipe standards, which provide an ongoing benefit due to fleet turnover.

[FR Doc. 94–1061 Filed 1–14–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[MD29–1–6195; FRL–4826–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

Attachment 12

relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 28, 1994, unless by September 28, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action, in conjunction with the document in the proposed rules section of today's Federal Register, serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 28, 1994.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

The removal of these rules from the SIP does not create any new requirements, because there are no longer any sources subject to these rules in the District. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *United States E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Date: August 10, 1994.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.]

Subpart F—California

2. Section 52.220 is amended by revising paragraphs (c)(6) and (c)(183)(i)(A)(*2*); and by adding paragraph (c)(41)(ii)(A)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(6) Revised regulations for all APCD's submitted on June 30, 1972, by the Governor, except for:

(i) San Diego County Air Pollution Control District.

(A) Rule 65 is now removed without replacement as of March 14, 1989.

* * * * *

(41) * * *

(ii) * * *

(A) * * *

(*1*) Rule 65 is now removed without replacement as of March 14, 1989.

* * * * *

(183) * * *

(i) * * *

(A) * * *

(*2*) Rule 61.9, adopted on March 14, 1989, is now removed without replacement as of April 19, 1994.

* * * * *

[FR Doc. 94–21170 Filed 8–26–94; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[WA–10–1–5830a; WA–21–1–6278a; FRL–5017–3]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) approves numerous amendments to Regulations I and II of the Puget Sound Area Pollution Control Agency's (PSAPCA) rules and the addition of Regulation III, for the control of air pollution in Pierce, King, Snohomish, and Kitsap Counties, Washington, as revisions to the Washington State Implementation Plan (SIP). In addition, EPA approves the part D New Source Review (Article 6) rules as they apply to PSAPCA's jurisdiction (Pierce, King, Snohomish, and Kitsap Counties). These revisions were submitted by the Director of the Washington State Department of Ecology (WDOE) on September 11, 1992 and October 20, 1993 in accordance with the requirements of section 110 and part D of the Clean Air Act (herein the Act) and superseded and replaced previously submitted rules by PSAPCA. In accordance with Washington statutes, PSAPCA rules must be at least as stringent as the WDOE statewide rules.

DATES: This final rule will be effective on October 28, 1994, unless adverse or critical comments are received by September 28, 1994. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to:

Montel Livingston, SIP Manager, Air Programs Branch (AT–082), EPA, Docket #WA10–1–5830 and WA21–1–6278, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air Programs Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and Washington Department of Ecology, PO Box 47600, Olympia, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Air Programs Branch (AT–082), EPA, Region 10, Seattle, Washington 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION:

I. Background

On September 11, 1992, the Director of WDOE submitted to EPA Region 10 revised and updated regulations for PSAPCA affecting King, Pierce, Snohomish, and Kitsap Counties. Included in this submittal were numerous revisions, renumbering/movement of rules, additions, and deletions, as approved by the Board of Directors of PSAPCA, to its currently federally approved regulations I and II. Also included in this submittal was regulation III, a new regulation not previously in the EPA approved Washington SIP. On October 8, 1993, the Director of WDOE submitted to EPA Region 10 another set of updated PSAPCA revisions to regulations I, II, and III affecting King, Pierce, Snohomish, and Kitsap Counties which superseded the September 11, 1992, submittal. PSAPCA and WDOE held joint public hearings each time to receive public comment on the September 11, 1992 and October 8, 1993 revisions to PSAPCA's rules as updates to the Washington SIP, and no public testimony was offered. Among these amendments were technical amendments to bring PSAPCA regulations into conformance with the open burning program for the state of Washington, revisions to PSAPCA's New Source Review provisions to comply with new requirements under the Act, various definition changes to improve clarity of new and revised sections, and overall strengthening measures for the control of ozone within the affected nonattainment areas and, generally, the control of particulate matter.

II. Description of Plan Revisions

The PSAPCA amendments submitted by WDOE on September 11, 1992 and October 8, 1993 for inclusion into the Washington SIP were essentially local air pollution regulations which are at least as stringent as the statewide rules of the WDOE.

To begin, this rulemaking action includes several revisions to the following Articles of the previously EPA approved PSAPCA regulations.

Regulation I

Article I Policy, Short Title and Definitions; Article 3 General Provisions; Article 6 New Source Review; Article 8 Outdoor Fires; and Article 9 Emission Standards.

Regulation II

Article I Purpose, Policy, Short Title and Definitions; Article 2 Gasoline Marketing Emission Standards; Article 3 Miscellaneous Volatile Organic Compound Emission Standards; and Article 4 General Provisions.

For those revisions to regulations I and II which involve emission standards and are part of the current EPA approved Washington SIP, the overall effect of each of the amendments is to reduce the allowable emissions. The new source review provisions of article 6, regulation I were revised to meet the new requirements of part D of the Act as set forth in the General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990 (57 FR 13498, April 16, 1992). For those revisions to article I, regulation II, which involved definitions, some definitions were deleted which are no longer used and new definitions were added which apply to new sections of the Regulation.

This rulemaking action also includes the addition of the following elements for inclusion into the Washington SIP:

Regulation I

Article 5 Registration, all sections.
Article 6 New Source Review, section 6.10 Work Done Without an Approval.
Article 9 Emission Standards, sections 9.08, 9.11, 9.13, 9.15, 9.16, 9.17, 9.20.
Article 11 Ambient Air Quality Standards and Control Measure Required, all sections.
Article 12 Standards of Performance for Continuous Emission Monitoring Systems, all sections.
Article 13 Solid Fuel Burning Device Standards, all sections.

Regulation II

Article 3 Miscellaneous Volatile Organic Compound Emission Standards, sections 3.03, 3.04, 3.08, and 3.11.

Regulation III

Article 1 General Requirements, all sections.
Article 2 Review of Toxic Air Contaminant Sources, all sections.
Article 3 Source-Specific Emission Standards, all sections; and
Article 4 Asbestos Control Standard, all sections.

The overall effect of the additions to regulation I which involve emission standards is to reduce allowable emissions as they are additional requirements and do not supersede the requirements already in the SIP. The overall effect of the addition of regulation III provides for additional control measures for ozone and particulate matter, and strengthens measures for the control of ozone and particulate matter within the affected nonattainment areas.

Finally, this rulemaking action includes action taken by PSAPCA's Board of Directors which approved the deletion of some elements from PSAPCA's regulations I and II of the Washington SIP and the renumbering and movement of certain rules within PSAPCA's regulations. Where the rules previously had been approved by EPA, EPA is approving the renumbering and movement of rules as submitted by the State.

Regulation I—Deletions and Movement of Rules

Deletions: Sections 3.03 Investigations and Studies by the Control Officer; 3.12 Appeals from Board Orders; 3.13 Status of Orders on Appeal; 3.15 Interfering with or Obstructing Agency Personnel; 3.21 Service of Notice; 6.05 Information Required for Notice of Construction and Application for Approval; 6.11 Conditional Approval; 6.12 Time Limits; 8.05 Emission Standard Exemptions; and 9.02 Outdoor Fires. Provisions for appeals (previously section 3.11 Orders and Hearings) are now found under section 3.17 Appeal of Orders. Section 7.02 Filing Fees previously had been part of the EPA approved Washington SIP because it covered fees for more than just 7.01 Variances, which was not a part of the EPA approved SIP. However, now section 7.02 has been revised and renumbered as a part of the new Variance Article and EPA will be taking no action on both the variance provision and the filing fee provision. Provisions for emission standard exemptions and outdoor fires are now found under Article 8 Outdoor Fires.

Regulation II—Deletions and Movement of Rules

Deletion: Section 2.13 Schedule of Control Dates. Provisions for Solvent Metal Cleaners (previously section 2.09) are now found under regulation III, section 3.05.

Deletions: Sections 3.02 High Vapor Pressure Volatile Organic Compound Storage in External Floating Roof Tanks; 3.11 Schedule of Compliance Dates; 4.01 Enforcement; and 4.03 Alternative Control Dates. Provisions for section 3.02 can now be found under section 2.04; provisions for Leaks from Gasoline Transport Tanks and Vapor Recovery Systems (previously section 3.03) can now be found under section 2.08; provisions for Perchloroethylene Dry Cleaning Systems (previously section 3.04) can now be found under Regulation III, section 3.03. Provisions

for enforcement may be found in Regulation I, section 3.15.

Under Washington statutes, rules of any local air pollution control authority must be at least as stringent as the statewide rules of the WDOE. Since EPA has already approved the statewide rules as meeting the requirements of the Act (July 27, 1993 (58 FR 4581)), with the exceptions described below, EPA is approving numerous amendments to the PSAPCA regulations I and II, and regulation III in their entirety.

Finally, EPA is taking no action on the following articles and sections which were included in the September 11, 1992 and October 8, 1993 submittals but have not been included in the Washington SIP in the past. Specifically, under Regulation I, EPA is taking no action on the following:

Article 4 Variances (all sections);
Article 9 Emission Standards
Section 9.10 Emission of Hydrochloric Acid; and
Section 9.12 Odor and Nuisance Control Measures.

III. Discussion of New Source Review Revisions

Regulation I, Article 6 New Source Review is currently approved by EPA as meeting the requirements of part D of the Act and 40 CFR 51.165 as in effect prior to the Clean Air Act Amendments of 1990. However, the 1990 Amendments established numerous new requirements for part D new source review programs depending upon the seriousness of the nonattainment problem. Furthermore, the Amendments established specific deadlines for submittal of revisions to existing SIP new source review programs for each nonattainment pollutant and area classification.

There are a number of nonattainment areas within PSAPCA's jurisdiction. Specifically, there are three moderate PM_{10} nonattainment areas, one marginal ozone nonattainment area, and one moderate carbon monoxide nonattainment area. Revisions to new source review rules were required to be submitted to EPA by June 30, 1992 for PM_{10}, November 15, 1992 for ozone, and November 15, 1992 for carbon monoxide. However, because of the classification of the nonattainment areas, only minor revisions to the existing approved rules were required by the Amendments. These needed revisions are described in detail in sections III.A.2., III.B.2.f., III.C.1.d., and III.G. of the "General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990 (57 FR 13498, April 16, 1992)."

The revisions to the PSAPCA regulations submitted on October 8, 1993: (1) Establish a minimum offset ratio of 1.10 to 1 for all nonattainment pollutants (Section 6.07(d)(3)); (2) require that the offsets come from sources in the same nonattainment area (Section 6.07(d)(3)); (3) require that the amount of emission reduction credit be based on the lower of a source's current actual or allowable emissions to ensure that offsets represent real reductions in actual emissions and that no credit is given for reductions otherwise required by the Act (Section 6.08(b)); (4) ensure that offsets will be federally-enforceable at the time the part D new source review permit is issued (Section 6.08(d)) and that the actual reduction will occur by the time that the new major source or major modification would begin operation (Section 6.07(d)(3)); and (5) expanded the coverage of the alternatives analysis to all nonattainment pollutants (6.07(d)(4)). These changes represent the revisions to the currently approved PSAPCA regulations required by the Clean Air Act Amendments as set forth in the "General Preamble" for moderate PM_{10}, marginal ozone, and moderate carbon monoxide nonattainment areas.

Section 189(e) of the Act, however, requires that the control requirements for PM_{10} also apply to sources of PM_{10} precursors unless the Administrator determines that such sources do not significantly contribute to PM_{10} levels that exceed the PM_{10} standards. EPA has made such determinations for the Kent and Seattle PM_{10} nonattainment areas (58 FR 40059–40060 and 59 FR 32370–32376). Based on information contained in the SIP for the Tacoma PM_{10} nonattainment area submitted by WDOE on November 15, 1991, EPA is determining, by this action, that such sources in the Tacoma PM_{10} nonattainment area do not significantly contribute to PM_{10} levels that exceed the PM_{10} standards. The basis for this determination is discussed in more detail in the technical support document that is part of the public docket for this rulemaking. EPA is, therefore, granting approval of the PSAPCA part D NSR rules as they apply to PSAPCA's jursidiction and is approving the rules for the ozone and carbon monoxide nonattainment areas.

IV. Summary of EPA Action

In this action, EPA approves numerous amendments to the PSAPCA rules as revisions to the Washington SIP. Specifically, EPA approves:

A. Revisions to Regulation I: Article I; Article 3; Article 6; Article 8; and Article 9; and the rescission under Article 3 of sections 3.03 (Investigations and Studies by the Control Officer), 3.12, 3.13 (Status of Orders on Appeal), 3.15, and 3.21; under Article 6 the rescission of sections 6.05, 6.11, and 6.12; under Article 8 the rescission of section 8.05; and, under Article 9 the rescission of section 9.02;

B. Revisions to Regulation II: Article I, Article 2, Article 3 and Article 4; and the rescission under Article 2 of section 2.13; under Article 3 the rescission of sections 3.02, and 3.11 (Schedule of Compliance Dates); and under Article 4 the rescission of sections 4.01 and 4.03;

C. Additions to Regulation I: Article 5; Article 6, sections 6.10 and 6.12; Article 9, sections 9.08, 9.11, 9.13, 9.15, 9.16, 9.17, and 9.20; Article 11; Article 12; and Article 13;

D. Additions to Regulation II: Article 3, sections 3.03 (Can and Paper Coating Operations), 3.04 (Motor Vehicle and Mobile Equipment Coating Operations), 3.08, and 3.11 (Coatings and Ink Manufacturing); and

E. Adoption of Regulation III, all Articles.

V. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register

publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 28, 1994, unless, by September 28, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 28, 1994.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: July 13, 1994.

Gerald A. Emison,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c) (43) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(43) On September 11, 1992 and October 8, 1993 the Director of the WDOE submitted revisions to PSAPCA's rules for the control of air pollution in Pierce, King, Snohomish, and Kitsap Counties, Washington as revisions to the Washington SIP. These revisions superseded and replaced previously submitted rules by PSAPCA.

(i) Incorporation by reference.

(A) September 11, 1992 letter from the Director of WDOE to EPA Region 10 submitting revisions to PSAPCA's rules for the control of air pollution in King, Pierce, Snohomish, and Kitsap Counties, Washington, for inclusion into the Washington SIP.

(B) Regulations I, II, and III as adopted by the Board of Directors, PSAPCA, and submitted through the WDOE to EPA Region 10, as a revision to the SIP, with a WDOE adopted date of September 16, 1992.

(C) October 8, 1993 letter from the Director of WDOE to EPA Region 10 submitting revisions to PSAPCA's rules for the control of air pollution in King, Pierce, Snohomish, and Kitsap Counties, Washington, for inclusion into the Washington SIP.

(D) Regulations I, II, and III as adopted by the Board of Directors, PSAPCA, and submitted through WDOE to EPA Region 10, as a revision to the SIP, with a WDOE adopted date of October 18, 1993.

3. Section 52.2479 is amended by revising the entry and the entry heading for "Puget Sound Air Pollution Control Authority—Regulation I" and the entry and entry heading for "Puget Sound Air Pollution Control Authority—Regulation II"; and by adding a new entry "Puget Sound Air Pollution Control Agency—Regulation III" to read as follows:

§ 52.2479 Contents of the federally approved, state submitted implementation plan.

* * * * *

Puget Sound Air Pollution Control Agency—Regulation I

Article 1 Policy, Short Titles and Definitions
- 1.01 Policy (10–10–73)
- 1.03 Name of Agency (3–13–68)
- 1.05 Short Title (3–13–68)
- 1.07 General Definitions (11–19–92)

Article 3 General Provisions
- 3.01 Duties and Powers of the Control Officer (8–8–91)
- 3.03 Display of Notices: Removal or Mutilation Prohibited (8–8–91)
- 3.05 Investigations by the Control Officer (8–8–91)
- 3.07 False and Misleading Oral Statements: Unlawful Reproduction or Alteration of Documents (8–8–91)
- 3.09 Violations—Notice (8–8–91)
- 3.11 Civil Penalties (9–10–92)
- 3.13 Criminal Penalties (8–8–91)
- 3.15 Additional Enforcement (8–8–91)
- 3.17 Appeal of Orders (8–8–91)
- 3.19 Confidential Information (8–8–91)
- 3.21 Separability (8–8–91)

Article 5 Registration
- 5.02 Definition and Components of Registration Program (12–9–82)
- 5.03 Registration Required (8–9–90)
- 5.05 General Requirements for Registration (8–9–90)
- 5.07 Fees—Registration Program (12–12–91)
- 5.08 Shut Down Sources (11–12–87)
- 5.09 Noncompliance is Unlawful (12–9–82)
- 5.10 Surcharge for Mandatory Training Programs (11–14–91)
- 5.11 Surcharge for Blenders of Oxygenated Gasoline (11–19–92)

Article 6 New Source Review
- 6.03 Notice of Construction (11–19–92)
- 6.04 Filing Fees (11–19–92)
- 6.06 Requirements for Public Notice (3–13–80)
- 6.07 Order of Approval—Order to Prevent Construction (11–19–92)
- 6.08 Emission Reduction Credit Banking (11–19–92)
- 6.09 Notice of Completion (11–19–92)
- 6.10 Work Done Without an Approval (11–12–87)

Article 8 Outdoor Fires
- 8.01 Policy (4–9–92)
- 8.02 Outdoor Fires—Prohibited Types (5–13–93)
- 8.03 Outdoor Fires—Prohibited Areas (5–13–93)
- 8.04 General Conditions (4–9–92)

Article 9 Emission Standards
- 9.03 Emission of Air Contaminant: Visual Standard (5–11–89)
- 9.04 Deposition of Particulate Matter (6–9–83)
- 9.05 Incinerator Burning (6–9–88)

9.06 Refuse Burning Equipment: Time Restriction (6–9–88)
9.07 Emission of Sulfur Oxides (6–9–88)
9.08 Combustion and Marketing of Waste-Derived Fuels (2–13–86)
9.09 Emission of Particulate Matter: Concentration Standards (5–11–89)
9.11 Emission of Air Contaminant: Detriment to Person or Property (6–9–83)
9.13 Emission of Air Contaminant: Concealment and Masking Restricted (6–9–88)
9.15 Fugitive Dust: Emission Standard (8–10–89)
9.16 Spray Coating Operations (6–13–91)
9.17 Report of Startup, Shutdown, Breakdown, or Upset Condition (5–10–84)
9.20 Maintenance of Equipment (6–9–88)
Article 11 Ambient Air Quality Standards and Control Measure Required
11.01 Air Quality Control Measures (8–14–80)
11.03 Ambient Air Quality Standards: Suspended Particulate (8–14–80)
11.04 Ambient Air Quality Standards: PM_{10} (6–9–88)
11.05 Ambient Air Quality Standards: Lead (8–14–80)
11.06 Ambient Air Quality Standards: Carbon Monoxide (8–14–80)
11.07 Ambient Air Quality Standards: Ozone (8–14–80)
11.08 Ambient Air Quality Standards: Nitrogen Dioxide (8–14–80)
11.09 Ambient Air Quality Standards: Sulfur Dioxide (8–14–80)
Article 12 Standards of Performance for Continuous Emission Monitoring Systems
12.01 Introduction (8–10–89)
12.02 Continuous Emission Monitoring Requirement (8–10–89)
12.03 Quality Assurance Requirements (8–10–89)
12.04 Record Keeping and Reporting Requirements (8–10–89)
Article 13 Solid Fuel Burning Device Standards
13.01 Policy and Purpose (9–26–91)
13.03 Opacity Standards (10–11–90)
13.04 Prohibited Fuel Types (9–26–91)
13.05 Curtailment (9–26–91)

Puget Sound Air Pollution Control Agency—Regulation II

Article 1 Purpose, Policy, Short Title and Definitions
1.01 Purpose (3–13–80)
1.02 Policy (6–13–91)
1.03 Short Title (12–11–80)
1.04 General Definitions (12–11–80)
1.05 Special Definitions (6–13–91)
Article 2 Gasoline Marketing Emission Standards
2.03 Petroleum Refineries (6–13–91)
2.04 Volatile Organic Compound Storage Tanks (6–13–91)
2.05 Gasoline Loading Terminals (1–9–92)
2.06 Bulk Gasoline Plants (6–13–91)
2.07 Gasoline Stations (1–9–92)
2.08 Leaks from Gasoline Transport Tanks and Vapor Recovery Systems (6–13–91)
Article 3 Miscellaneous Volatile Organic Compound Emission Standards
3.01 Cutback Asphalt Paving (6–13–91)
3.03 Can and Paper Coating Operations (6–13–91)
3.04 Motor Vehicle and Mobile Equipment Coating Operations (6–13–91)
3.05 Graphic Arts Systems (12–11–80)
3.07 Petroleum Solvent Dry Cleaning Systems (2–11–82)
3.08 Polyester, Vinylester, Gelcoat, and Resin Operations (6–13–91)
3.09 Aerospace Component Coating Operations (6–13–91)
3.11 Coatings and Ink Manufacturing (7–15–91)
Article 4 General Provisions
4.02 Testing and Monitoring (6–13–91)
4.04 Exceptions to VOC Emission Standards and Requirements (12–11–80)
4.05 Separability (12–11–80)

Puget Sound Air Pollution Control Agency—Regulation III

Article 1 General Requirements
1.01 Policy (2–11–93)
1.02 Short Title (1–9–92)
1.03 Area Sources of Toxic Air Contaminants (8–9–90)
1.05 Purpose and Approach (8–9–90)
1.07 General Definitions (1–9–92)
1.08 Special Definitions (2–11–93)
1.09 Emission Monitoring Requirements (8–9–90)
1.11 Reporting Requirements (8–9–90)
Article 2 Review of Toxic Air Contaminant Sources
2.01 Applicability (1–9–92)
2.03 New or Altered Toxic Air Contaminant Sources (8–9–90)
2.05 Registered Sources of Toxic Air Contaminants (8–9–90)
Article 3 Source-Specific Emission Standards
3.01 Chromic Acid Plating and Anodizing (1–9–92)
3.03 Perchloroethylene Dry Cleaners (1/9/92)
3.05 Solvent Metal Cleaners (8–9–90)
3.07 Ethylene Oxide Sterilizers and Aerators (1–9–92)
Article 4 Asbestos Control Standard
4.01 Application Requirements and Fees (2–11–93)
4.02 Procedures for Asbestos Emission Control (2–11–93)
4.03 Disposal of Asbestos-Containing Waste Material (2–11–93)

* * * * *

[FR Doc. 94–21173 Filed 8–26–94; 8:45 am]

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40 CFR Part 52

[CA 95–1–6591a; FRL–5055–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern Rule 8–8, "Wastewater (Oil-Water) Separators" from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on this rule serves as a final determination that the deficiency in this rule has been corrected and that on the effective date of this action, any sanction or Federal Implementation Plan (FIP) clock is stopped. The revised rule controls VOC emissions from separation of oil-water mixtures. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on October 28, 1994 unless adverse or critical comments are received by September 28, 1994. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rule revision and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revision are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Erik H. Beck, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1190. Internet: beck.erik@epamail.epa.gov.

Attachment 13

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). As explained previously, the SIP revision being approved in this action includes identical BART emission limits and related administrative requirements (*i.e.,* monitoring, recordkeeping and reporting requirements) to the EPA's 2012 FIP.

L. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability.

M. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 17, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 8, 2018.

E. Scott Pruitt,

Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

■ 2. In § 52.1670, the table in paragraph (d) is amended by revising the entry ''Roseton Generating Station-Dynegy'' to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS

Name of source	Identifier No.	State effective date	EPA approval date	Comments
*	*	*	*	*
Roseton Generating Station	NYSDEC Facility No. 33346000075.	12/5/2016	2/16/2018	Best Available Retrofit Technology (BART) emission limits for SO_2 pursuant to 6 NYCRR part 249 for Units 1 and 2.
*	*	*	*	*

* * * * *

§ 52.1686 [Removed and Reserved]

■ 3. Section 52.1686 is removed and reserved.

[FR Doc. 2018–03192 Filed 2–15–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2017–0138; FRL–9973–19–Region 1]

Air Plan Approval; New Hampshire; Rules for Open Burning and Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire on August 9, 2011 and July 23, 2013. These SIP revisions establish rules for open burning and establish emission standards and operating practices for incinerators and wood waste burners that are not regulated pursuant to Federal incinerator standards. We are also approving revisions to the definitions of ''Incinerator'' and ''Wood Waste Burner,'' submitted by the State on July 23, 2013 and October 26, 2016, respectively. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on March 19, 2018.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2017–0138. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office

Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Environmental Scientist, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1684; *simcox.alison@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background and Purpose

On January 10, 2003, New Hampshire Department of Environmental Services (NH DES) submitted a SIP revision for Env-A 1000 (Prevention, Abatement and Control of Open Source Air Pollution). On August 9, 2011, NH DES submitted an updated version of this regulation. Because the 2011 submittal superseded the previous submission, the State withdrew the 2003 submittal on May 5, 2014. The withdrawal letter is included in the docket for this action.

On July 23, 2013, NH DES submitted Env-A 1900 (Incinerators and Wood Waste Burners) and Env-A 101.104 (definition of ''Incinerator'') to EPA for approval. Env-A 1900 is not currently part of the federally-approved New Hampshire SIP. The definition of the term ''Incinerator'' is currently part of the New Hampshire SIP, but is codified at Env-A 101.59 [1] and does not include a reference to ''wood-waste burners.'' The submitted definition of ''Incinerator'' adds ''wood-waste burners'' to the definition and is codified at Env-A 101.104. The current SIP-approved version of the definition of ''Incinerator'' (Env-A 101.59) will be replaced by the new definition of that term (Env-A 101.104) as a result of this approval.

A definition of ''Wood Waste Burner'' is currently part of the New Hampshire SIP, but is codified as Env-A 101.95 and explicitly excludes incinerators. On October 26, 2016, NH DES submitted a revision of the definition of ''Wood Waste Burner'' (Env-A 101.219) to EPA for approval. This revised definition does not exclude incinerators. The current SIP-approved version of the definition of ''Wood Waste Burner'' (Env-A 101.95) will be replaced by the new definition of that term (Env-A 101.219) as a result of this approval.

The version of Env-A 1900 (Incinerators and Wood Waste Burners) submitted by the State to EPA included an affirmative defense provision for malfunction, which is defined as a sudden and unavoidable breakdown of process or control equipment. On April 13, 2016, NH DES sent a letter to EPA withdrawing the affirmative defense provision in Env-A 1900 (*i.e.,* 1902.02). In addition, an earlier SIP submission of Env-A 1900 had included an exception to the 20-percent visible emissions limit that would have allowed these emissions to be exceeded for one period of 6 continuous minutes in any 60-minute period during startup, shutdown, or malfunction. However, NH DES removed this exception from the July 23, 2013 submittal.

These SIP revisions establish rules for open burning and establish emission standards and operating practices for incinerators and wood waste burners that are not regulated pursuant to Federal incinerator standards. New Hampshire also submitted revisions to the definitions of ''Incinerator'' and ''Wood Waste Burner'' on July 23, 2013 and October 26, 2016, respectively.

On September 6, 2017, EPA published a Notice of Proposed Rulemaking (82 FR 42054) and Direct Final Rulemaking (DFRN) (82 FR 42037) proposing to approve and approving, respectively, the revisions submitted by New Hampshire on August 9, 2011, July 23, 2013, and October 26, 2016.

In the DFRN, EPA stated that if an adverse comment were to be submitted to EPA by October 6, 2017, the action would be withdrawn and not take effect, and a final rule would be issued based on the NPR. EPA received a comment that is not relevant to this SIP action, and one adverse comment that is relevant, before the close of the comment period. Therefore, EPA withdrew the DFRN on November 6, 2017 (82 FR 51349).

This action is a final rule based on the NPR. A detailed discussion of New Hampshire's August 9, 2011; July 23, 2013; and October 26, 2016, SIP revisions, and EPA's rationale for approving these were provided in the DFRN and will not be restated here, except to the extent relevant to our response to the public comments we received.

II. Response to Comments

EPA received public comments from anonymous commenters on our September 6, 2017 NPR. All of the comments are contained in the docket for this final action. One commenter submitted a comment that is not relevant to this SIP action and, therefore, requires no response. One commenter submitted two comments that are adverse and are discussed below.

Comment 1: An anonymous commenter noted that the proposed revisions to New Hampshire's Env-A 1000 (Prevention, Abatement and Control of Open Source Air Pollution) removes the reference to National Ambient Air Quality Standards (NAAQS) nonattainment areas for particulate matter (PM) pollution that appears in the current SIP-approved version of Env-A 1000. The commenter stated that ''EPA should not be allowed to reduce emission standards just because a corporation or company incinerator wants to burn more wood. Wood is a particularly dirty fuel source that causes significant particulate matter pollution both 2.5 microns and 10 microns.''

Response 1: The SIP-approved Env-A 1000 (provision 1001.02) allowed for certain types of open burning if: (1) Not prohibited by local ordinance or officials having jurisdiction, such as state forest fire wardens, and (2) where the particular area has not been designated nonattainment in relation to the NAAQS for PM. Under Env-A 1000, such burning was allowed in NAAQS nonattainment areas for PM (when not prohibited by local ordinance or officials having jurisdiction) if written authorization had been obtained by the NH DES. In the revised version of Env-A 1000, the State has removed the restriction on these activities in nonattainment areas for particulates. EPA believes that the version of Env-A 1000 we are approving is consistent with CAA requirements for SIP revisions, notwithstanding the absence of references to nonattainment areas for NAAQS as a limiting condition on certain types of burning. Because there have never been any designated nonattainment areas for PM in New Hampshire, the current provision is not in fact imposing any restrictions on emissions. Thus, the emissions reductions attributable to the revised version of Env-A 1000 we are approving is functionally the same as the prior version. Moreover, we note that the current ambient levels of PM within the

[1] This appears to be an error because there are two different terms numbered 101.59 in Env-A 101, and the term ''incinerator'' is listed after term number 48 and before term number 50.

State are below the currently applicable PM NAAQS. In the event that ambient PM in New Hampshire were to exceed the applicable NAAQS, we would expect the State to add additional emissions controls to address the appropriate sources to bring the area back into attainment.

Comment 2: The same anonymous commenter asserted that the ''EPA also can't remove nuisance provisions as they can cover enforcement of NAAQS pollutants that cause nuisances to neighboring communities and disadvantages communities. Sometimes only nuisance provisions are the only enforcement mechanism available to the little people that can't afford big lawyers or consent decrees with big companies.''

Response 2: New Hampshire's revision to Env-A 1000 removes two references to ''nuisance'' in the current SIP, which was approved in 1994. EPA believes that the State's revised version of the regulation is approvable under the CAA because the term ''nuisance'' in Env-A 1000, as defined in state law, is a broad concept that could be applied to prohibit impacts that bear no reasonable connection to the NAAQS and related air-quality goals of the CAA. The fact that something may cause a nuisance does not necessarily equate to a condition that would interfere with attainment or maintenance of the NAAQS. The wording of the prior version of the SIP provision was not sufficiently related to attainment and maintenance of the PM NAAQS to warrant inclusion in the SIP. See, for example, analogous instances in which EPA has removed from SIPs certain regulations that prohibit odors (61 FR 47058, September 6, 1996), or that contain a general prohibition against air pollution (63 FR 65557, November 27, 1998).

III. Final Action

EPA is approving and incorporating two regulations into the New Hampshire SIP. The two regulations include revised Env-A 1000 (Prevention, Abatement and Control of Open Source Air Pollution) submitted by the State of New Hampshire on August 9, 2011, effective on May 1, 2011; and Env-A 1900 (Incinerators and Wood Waste Burners) submitted by the State on July 23, 2013, effective April 23, 2013, except for the withdrawn affirmative defense provision. The revised version of Env-A 1000 that we are approving into the SIP will replace the existing SIP-approved version of Env-A 1000.

In addition, EPA is approving a revised definition of ''Incinerator'' (Env-A 101.104), submitted by the State on July 23, 2013, effective April 23, 2013, which replaces the definition of ''Incinerator'' currently in the New Hampshire SIP (numbered Env-A 101.59). We are also approving a revised definition of ''Wood Waste Burner'' (Env-A 101.219), submitted by the State on October 26, 2016, effective January 14, 2005, which replaces the definition of ''Wood Waste Burner'' currently in the New Hampshire SIP (numbered Env-A 101.95). Thus, the SIP at Env-A 101.59 and at Env-A 101.95 will read ''[reserved].''

New Hampshire organizes Env-A 101 (Definitions) alphabetically, and also assigns a codification number, in sequential order, to each defined term. Because the State's SIP submissions did not include the entirety of Env-A 101, and the State has added other definitions to Env-A 101 over time (not all of which are SIP-approved), our approval of the two definitions in this action will result in the numbered codification assigned to the defined terms being out of numerical sequence in the SIP. However, the two defined terms will still be in alphabetical order.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the New Hampshire Code of Administrative Rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov,* and/or at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[2]

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a

[2] 62 FR 27968 (May 22, 1997).

rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of nonagency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801. Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 20, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 6, 2018.

Alexandra Dapolito Dunn,

Regional Administrator, EPA New England.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EE—New Hampshire

■ 2. In § 52.1520 paragraph (c), amend the table by:

■ a. Adding four entries for''Env-A 100'' after the entry ''Env-A 100; Organizational Rules: Definitions'';

■ b. Revising the entry ''Env-A 1000''; and

■ c. Adding in numerical order an entry ''Env-A 1900''.

The revision and additions read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW HAMPSHIRE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date [1]	Explanations
*	* *	*	*	* *
Env-A 100	Definition of ''Incinerator''	04/29/2003	02/16/2018, [Insert **Federal Register** citation].	Remove Part Env–A 101.59, definition of ''Incinerator'' and replace with ''[reserved].''
Env-A 100	Definition of ''Wood Waste Burner''.	04/29/2003	02/16/2018, [Insert **Federal Register** citation].	Remove Part Env–A 101.95, definition of ''Wood Waste Burner'' and replace with ''[reserved].''
Env-A 100	Definition of ''Incinerator''	04/23/2013	02/16/2018, [Insert **Federal Register** citation].	Approve Part Env–A 101.104, definition of ''Incinerator.''
Env-A 100	Definition of ''Wood Waste Burner''.	01/14/2005	02/16/2018, [Insert **Federal Register** citation].	Approve Part Env–A 101.219, definition of ''Wood Waste Burner.''
*	* *	*	*	* *
Env-A 1000	Control of Open Burning	05/01/2011	02/16/2018, [Insert **Federal Register** citation].	Approve Part Env–A 1000 ''Prevention, Abatement and Control of Open Source Air Pollution.''
*	* *	*	*	* *
Env-A 1900	Emission Standards and Operating Practices for Incinerators.	04/23/2013	02/16/2018, [Insert **Federal Register** citation].	Approve Part Env–A 1900 ''Incinerators and Wood Waste Burners.''
*	* *	*	*	* *

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

[FR Doc. 2018–03251 Filed 2–15–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0247; FRL–9973–03]

Pendimethalin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the tolerances for residues of pendimethalin in or on alfalfa, forage and alfalfa, hay. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 16, 2018. Objections and requests for hearings must be received on or before April 17, 2018, and must be filed in accordance with the instructions provided in 40 CFR part

Attachment 14

through the annual compliance review proceedings, but also proposes an alternative before-the-fact review of rate adjustments. *Id.* at 10. The Postal Service submits these proposed rules and alternative proposed rules in Appendix I of the Petition.

IV. Invitation to Comment

The Commission establishes Docket No. RM2019–2 for consideration of matters raised in the Petition. More information on the Petition may be accessed via the Commission's website at *http://www.prc.gov*. Interested persons may submit comments on the Petition no later than December 10, 2018.

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2019–2 for consideration of the matters raised by the Petition of the United States Postal Service to Initiate a Rulemaking Concerning Ratemaking Procedures for Inbound Letter Post and Related Services, filed November 16, 2018.

2. Comments are due no later than December 10, 2018.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–25665 Filed 11–23–18; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0596; FRL–9986–94–Region 10]

Air Plan Approval; OR: Lane County Outdoor Burning and Enforcement Procedure Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve and incorporate by reference (IBR) into the Oregon State Implementation Plan (SIP) the Lane Regional Air Protection Agency's (LRAPA) revised outdoor burning rule submitted by the Oregon Department of Environmental Quality (ODEQ) on July 19, 2018. The revised rule, as it applies in Lane County, Oregon, clarifies terminology and provides additional controls of outdoor burning activities, reducing particulate emissions and strengthening the Oregon SIP. In addition, the EPA proposes to approve but not IBR the enforcement procedures and civil penalties rule for LRAPA submitted by the ODEQ on September 25, 2018. The revised rule contains revisions that bring enforcement procedures and civil penalties rule into alignment with recent changes in Oregon State regulations.

DATES: Comments must be received on or before December 26, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2018–0596, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Christi Duboiski at (360) 753–9081, or *duboiski.christi@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

Table of Contents

I. Background

Each State has a Clean Air Act (CAA) State Implementation Plan (SIP), containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) established for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP contains such elements as air pollution control regulations, emission inventories, attainment demonstrations, and enforcement mechanisms. The SIP is a compilation of these elements and is revised and updated by a State over time—to keep pace with Federal requirements and to address changing air quality issues in that State.

The Oregon Department of Environmental Quality (ODEQ) implements and enforces the Oregon SIP through rules set out in Chapter 340 of the Oregon Administrative Rules (OAR), Divisions 200 to 268, apply in all areas of the State, except where the Oregon Environmental Quality Commission (EQC) has designated Lane Regional Air Protection Agency (LRAPA) to administer rules within its area of jurisdiction.

LRAPA has been designated by the EQC to implement and enforce State rules in Lane County, and to adopt local rules that apply within Lane County. LRAPA may promulgate a local rule in lieu of a State rule provided: (1) it is as strict as the corresponding State rule; and (2) it has been submitted to and approved by the EQC. This delegation of authority to LRAPA in the Oregon SIP is consistent with CAA section 110(a)(2)(E) requirements for State and local air agencies.

On July 19, 2018 and September 25, 2018, the ODEQ and LRAPA submitted revisions to the Oregon SIP as it applies in Lane County. These changes update the LRAPA Title 47 outdoor burning rule providing clarification and additional controls of outdoor burning activities in Lane County and align the Title 15 enforcement procedure and civil penalties rule with recently approved State rules in OAR Chapter 340, Division12 (80 FR 64346, October 23, 2015).

II. Evaluation of Revisions

A. Title 47: Outdoor Burning

LRAPA regulates outdoor burning throughout Lane County, Oregon, except for agricultural burning, forest slash burning permitted by the Oregon Department of Forestry or U.S. Forest Service, and fire department training burns. The LRAPA Title 47 outdoor burning rule, most recently approved by the EPA on October 23, 2015, is an element of the SIP strategy outlining how Oregon will meet Federal air quality standards to protect public health and the environment (80 FR 64346). In general, the revised LRAPA outdoor burning rule provides for additional controls of outdoor burning activities in Lane County, Oregon. In addition, the submitted revisions make clarifications, incorporate housekeeping changes that eliminate duplicative text, change the ''open burning'' reference to ''outdoor burning'', separate the reference of Eugene-Springfield Urban Growth Boundary (ESUGB) to the Eugene Urban Growth Boundary (UGB) and the Springfield UGB (noting each as a separate and distinct UGB), clean up typographical errors, and format and renumber sections and paragraphs. The key substantive changes are discussed below.

General

LRAPA revised the general policy section of Title 47, Section 47–001 to clarify the outdoor burning rule applies in Lane County in accordance with OAR 340–264–0160(1). This State rule establishes the outdoor burning requirements in Lane County are not to be less stringent than Oregon's rule and prohibits LRAPA from regulating agricultural outdoor burning. In addition, LRAPA added ''bonfires'' and ''ecological conversion'' to the list of outdoor burning categories to provide clarification and a more complete list of what types of permits LRAPA issues for outdoor burning,

Exemptions

LRAPA revised the agricultural outdoor burning exemption language in Section 47–005 to align with OAR 340–264–0040 and ORS 468A.020 and made clear that this type of burning is still subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal. The exemption for recreational fires on private property or in designated recreational areas was tightened in two ways: the prohibition on recreational fires on yellow and red home wood heating advisory days now extends from at least October through May (as opposed to November through February in the current SIP) and now applies in the Oakridge Urban Growth Boundary (in addition to within the Eugene and Springfield Urban Growth Boundaries and the city limits of Oakridge). Although outdoor barbequing remains exempt, woody yard trimmings, leaves and grass clippings may no longer be burned as fuel. Religious ceremonial fires remain exempt; however, LRAPA clarified the allowable size, location, and fuel source. Larger fires are to be permitted under the ''Bonfire'' requirement under Section 47–020 *Outdoor Burning Letter Permit.* LRAPA expects religious ceremonial fires to occur infrequently and the definition requires that such fires be controlled, be ''integral to a religious ceremony or ritual,'' and that prohibited materials not be burned.

Definitions

In general, the revisions to LRAPA's definitions in Section 47–010 clarify the types of burn categories, and further define restrictions and burn boundaries. For example, the ''bonfire'' definition establishes the size of a controlled outdoor fire to be larger than 3 feet in diameter and 2 feet in height. This helps to distinguish between what is allowed as a bonfire, or what is considered ''recreational'' or ''religious ceremonial''. LRAPA also clarified that a bonfire cannot serve as a disposal for prohibited materials listed in Section 47–015(1)(e). LRAPA bounded the definition of ''religious ceremonial fire'', setting limits on pile size, defining materials that can and cannot be burned and defining where the burn can take place. Finally, LRAPA defined ''outdoor burning letter permit'', issued pursuant to Section 47–020, to authorize burning of select materials at a defined site and under certain conditions. These updates provide clarification designed to enhance the enforceability of the rule. We propose to approve the submitted revisions to Title 47 definitions because the changes strengthen the SIP and are consistent with the CAA.

Outdoor Burning Requirements

LRAPA Section 47–015 contains most of the general requirements for all outdoor burning and specific requirements for the following burn types: residential, construction and demolition, commercial, industrial, and forest slash. The general outdoor burning requirements have been made more stringent in many respects. First, subsection 47–015(1)(e) regarding prohibited materials has been expanded to broadly prohibit the burning of items which, when burned, normally emit dense smoke noxious odors, or hazardous air contaminants, and specifically adds cardboard, clothing and grass clippings to the list of such items. The prohibition on the outdoor burning of cardboard and clothing was included to be at least as stringent with OAR 340–264–0160. In addition, a new provision was added, Section 47–015(1)(i), which prohibits the outdoor burning in barrels throughout Lane County.

Residential outdoor burning is allowed only on approved burning days with the start and end times for burning set as part of the daily burning advisory issued by LRAPA. The previous start and end times, beginning at sunrise and extending until sunset, were eliminated to avoid misinterpretation of the hours set by the LRAPA outdoor burning advisory, which generally allows the burn to commence a minimum of several hours after sunrise and requires the burn to be extinguished at least several hours prior to sunset.

LRAPA also added and expanded several provisions defining outdoor burning limits for the cities of Eugene, Springfield, Oakridge and Lowell and their associated urban growth boundaries; and the cities of Coburg, Cottage Grove, Creswell, Dunes City, Junction City, Veneta and Westfir. For example, LRAPA expanded outdoor burning limits from the Eugene city limits to the Eugene UGB, except that outdoor burning of wood yard trimmings is allowed on lots of two acres or more. The outdoor burning prohibition for Springfield was expanded to include the UGB, except that outdoor burning of woody yard trimmings is allowed on lots of one half acre or more. The Oakridge outdoor burning boundary was also expanded to include the UGB. In addition, LRAPA added that outdoor burning within Florence city limits is prohibited per Florence city ordinance. These changes strengthen the previous rule, which only restricted the burning of woody yard trimmings within the Eugene and Springfield city limits and as otherwise prohibited by some city fire codes. LRAPA's approved burn days are still from March 1 through June 15 and October 1 through October 31. LRAPA also formalized the prohibition of the outdoor burning of grass clippings throughout Lane County; however, the outdoor burning of fallen leaves and woody yard trimmings is still allowed, subject to restrictions based on time and location.

In general, these revisions impose more stringent requirements on additional geographic areas, increasing the overall stringency of the restrictions on outdoor burning, and the EPA

proposes to approve them as consistent with CAA requirements.

Letter Permits

Section 47–020 authorizes certain types of outdoor burning under letter permits issued by LRAPA. Section 47–020(2) has been amended, increasing the fees for letter permits issued for outdoor burning of standing vegetation from $100 to $1,000. A new provision in Section 47–020(2) authorizes the Director to compromise on the permit fee, on a case by case basis, based on set factors. In addition, Subsection 47–020(4) was amended to increase the permit fee for outdoor burning from $4 per cubic year to $10 per cubic yard, with a minimum fee of $100. The fee applies to all outdoor burning except for prescribed burning of standing vegetation, which is addressed in Section 47–010(2).

The EPA proposes to find the revised LRAPA Title 47 outdoor burning rule provides for additional controls on outdoor burning which are designed to reduce particulate emissions in Lane County and strengthen Oregon's SIP. Based on the EPA's review and analysis of the revised rule, the EPA is proposing to approve the submitted Title 47 revisions to the Oregon SIP for Lane County as meeting the requirements of section 110 of the Clean Air Act.

Rules not Appropriate for SIP Approval

Title 47 contains several provisions that are not appropriate for SIP approval, including but not limited to nuisance, fire safety, and Title V. The EPA's authority to approve SIPs extends to provisions related to attainment and maintenance of the NAAQS and carrying out other specific requirements of section 110 of the CAA. In this action, the EPA is not approving into the SIP the following provisions of Title 47 because they are inappropriate for SIP approval: LRAPA 47–010—definition of ''nuisance''; LRAPA 47–015(1)(d); LRAPA 47–015(1)(h); LRAPA 47–020(3); LRAPA 47–020(9)(i); and LRAPA 47–020(10) (80 FR 64346, October 23, 2015).

B. Title 15: Enforcement Procedure and Civil Penalties

Title 15 outlines enforcement procedures and civil penalty provisions that apply to air quality regulations implemented by LRAPA and approved by the EPA into the SIP. Title 15 provides the authority and procedures under which LRAPA notifies regulated entities of violations, determines the appropriate penalties for violations, and assesses penalties for such violations.

LRAPA updated Title 15 to correspond to the State enforcement rule in OAR Chapter 340, Division 12, approved by the EPA on October 23, 2015 (80 FR 64346). LRAPA revisions implement legislative increases in statutory maximum penalties, align violation classifications and magnitudes with program priorities, and provide greater mitigating credit for correcting violations. In addition, the rules incorporate housekeeping changes that include eliminating duplicative text, changing references from ''the Agency'' to ''LRAPA'' and ''open burning'' to ''outdoor burning'', formatting and renumbering the sections and paragraphs, and cleaning up typographical errors. The key substantive changes are discussed below.

Overall, LRAPA aligned its definitions with those in the corresponding State rule recently reviewed and approved by the EPA on October 23, 2015 (80 FR 64346). Key definition changes include adding definitions for ''alleged violation'', ''conduct'', ''notice of civil penalty assessment'', ''residential owner-occupant'' and ''willful'' and removing the term ''risk of harm''. To mirror the State's definition, LRAPA revised the term ''magnitude of the violation'' by removing language that is procedural in nature. Detailed procedures are centralized in Section 15–030 *Civil Penalty Determination Procedure (Mitigating and Aggravating Factors)*. LRAPA also simplified the definition of ''violation'' to remove redundant language defining the three classes of violation (class I, II and III).

The submitted revisions also include several rule sections revised to be consistent with OAR Chapter 340, Division 12. LRAPA revised Section 15.018 *Notice of Permit Violations and Exceptions* to align with OAR 340–012–0038 by including language requiring no advance notice prior to assessment of a civil penalty if the permittee has an Air Contaminant Discharge Permit (ACDP) condition that implements the SIP under the CAA and the permit violation would disqualify a State program from Federal approval or delegation.

Section 15.025 *Civil Penalty Matrices* was revised to align with State civil penalties in OAR 340–012–0140. The LRAPA penalty matrices and applications were updated to directly reflect Oregon's SIP-approved penalty amounts. LRAPA also amended Section 15.030 *Civil Penalty Determination* to provide the director the discretion to increase the penalty amount to $25,000 per violation per day of violation to correspond with OAR 340–012–0160(4). In addition, the civil penalty formulation factors were updated to mirror language in OAR 340–012–0045 and OAR 340–012–0145. The submitted revisions increase the additional civil penalties for violations that pose an extreme hazard to public health or cause extensive environmental damage to mirror those in OAR 340–200–012–0155. As stated in Section 15–045, nothing in Title 15 is intended to preclude LRAPA from assessing a penalty of up to the maximum allowed for the violation by Oregon Revised Statutes 468 (ORS 468).

LRAPA also aligned Section 15.060 *Selected Magnitude Categories* with the State SIP-approved language in OAR 340–012–0135 by removing a duplicative table defining significant emission rate amounts for selected air pollutant magnitude determinations. This information can now be found in LRAPA's Title 12, Tables 2 and 3.

The EPA has reviewed the revisions to the LRAPA Title 15 enforcement procedures and civil penalties rule and finds the rule continues to provide LRAPA with adequate authority to enforce the SIP as required by section 110 of the Clean Air Act. The EPA therefore proposes to approve into the SIP the revisions to Title 15 to the extent the provisions relate to section 110 of the CAA and determining compliance with and for purposes of implementation of SIP-approved requirements. We note that we are not incorporating Title 15 by reference into the Code of Federal Regulations (CFR). These types of rules are generally not incorporated by reference into the CFR because they may conflict with the EPA's independent administrative and enforcement procedures under the CAA.

III. Proposed Action

We propose to approve and incorporate by reference into the Oregon SIP the submitted revisions to the LRAPA Title 47 outdoor burning rule, Sections 001, 005, 010 (except the definition of ''nuisance''), 015 (except (1)(d) and (1)(h)), and 020 (except (3), (9)(i), and (10)). These rules were State effective July 13, 2018 and submitted to the EPA by the ODEQ and LRAPA on July 19, 2018.

We also propose to approve, but not incorporate by reference, the submitted revisions to the LRAPA Title 15 enforcement procedures and civil penalty rule, Sections 001, 005, 015, 018, 020, 025, 030, 035, 040, 045, 055, 057, 060, and 065. These rules were State effective on September 14, 2018, and submitted by the ODEQ and LRAPA on September 25, 2018. They align LRAPA's Title 15 rule with the ODEQ's

Division 12 and provide LRAPA with authority needed for SIP approval.

IV. Incorporation by Reference

In this document, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference the provisions described above in Section III. Proposed Action. The EPA has made, and will continue to make, these documents generally available electronically through *https://www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Oregon Notice Provision

Oregon Revised Statute 468.126 prohibits the ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The proposed SIP would not be approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 9, 2018.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2018–25679 Filed 11–23–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 158

[EPA–HQ–OPP–2018–0668; FRL–9984–47]

RIN 2070–AK41

Notification of Submission to the Secretaries of Agriculture and Health and Human Services; Pesticides; Technical Amendment to Data Requirements for Antimicrobial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of submission to the Secretaries of Agriculture and Health and Human Services.

SUMMARY: This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture (USDA) and the Secretary of the United States Department of Health and Human Services (HHS) a draft regulatory document concerning Pesticides; Technical Amendment to Data Requirements for Antimicrobial Pesticides. The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

DATES: On October 29, 2018, the EPA Administrator forwarded to the Secretary of the United States Department of Agriculture (USDA) and the Secretary of the United States Department of Health and Human Services (HHS) a draft regulatory document concerning Pesticides; Technical Amendment to Data Requirements for Antimicrobial Pesticides.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0668, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg. Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

Attachment 15

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

■ 1. The authority citation for part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. Add § 872.5571 to subpart F to read as follows:

§ 872.5571 Auto titration device for oral appliances.

(a) *Identification.* An auto-titration device for oral appliances is a prescription home use device that determines a target position to be used for a final oral appliance for the reduction of snoring and mild to moderate obstructive sleep apnea.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must evaluate the following:

(i) Performance characteristics of the algorithm; and

(ii) All adverse events.

(2) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions for use, including the following:

(i) Validation of the closed loop algorithm;

(ii) Mechanical integrity over the expected use life;

(iii) Characterization of maximum force, distance, and speed of device movement; and

(iv) Movement accuracy of intraoral components.

(3) Performance testing must demonstrate the wireless compatibility, electrical safety, and electromagnetic compatibility of the device in its intended use environment.

(4) Software verification, validation, and hazard analysis must be performed.

(5) The patient-contacting components of the device must be demonstrated to be biocompatible.

(6) Performance data must validate the reprocessing instructions for any reusable components.

(7) Patient labeling must include:

(i) Information on device use, including placement of sensors and mouthpieces;

(ii) A description of all alarms; and

(iii) Instructions for reprocessing any reusable components.

(8) A human factors assessment must evaluate simulated use of the device in a home use setting.

Dated: February 14, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02824 Filed 2–19–19; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0596; FRL–9989–56–Region 10]

Air Plan Approval; OR: Lane County Outdoor Burning and Enforcement Procedure Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving and incorporating by reference into the Oregon State Implementation Plan (SIP) the Lane Regional Air Protection Agency's (LRAPA) revised outdoor burning rule submitted by the Oregon Department of Environmental Quality (ODEQ) on July 19, 2018. The revised rule, as it applies in Lane County, Oregon, clarifies terminology and provides additional controls of outdoor burning activities, reducing particulate emissions and strengthening the Oregon SIP. In addition, the EPA is approving but not incorporating by reference the enforcement procedures and civil penalties rule for LRAPA submitted by the ODEQ on September 25, 2018. The revised rule brings the enforcement procedures and civil penalties rule, as it applies in Lane County, into alignment with recent changes in Oregon State regulations.

DATES: This final rule is effective March 22, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2018–0596. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Christi Duboiski at (360) 753–9081, or *duboiski.christi@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

Table of Contents

I. Background

On July 19, 2018 and September 25, 2018, the ODEQ and LRAPA submitted revisions to the Oregon SIP as they apply in Lane County. On November 18, 2018, the EPA proposed to approve the LRAPA Title 47 outdoor burning rule which provided clarification and additional controls of outdoor burning activities in Lane County (83 FR 60836).

We also proposed to approve the Title 15 enforcement procedure and civil penalties rule, bringing LRAPA's rule into alignment with recently approved State rules. The public comment period for our proposed action ended on December 26, 2018. We received no adverse comments.

II. Response to Comment

We received one comment in support of the proposed approval of the LRAPA Title 47 outdoor burning rule and the Title 15 enforcement procedure and civil penalties rule. A full copy of the comment received is available in the docket for this final action.

III. Final Action

We are approving, and incorporating by reference into the Oregon SIP, the submitted revisions to the LRAPA Title 47 outdoor burning rule, Sections 001, 005, 010 (except the definition of ''nuisance''), 015 (except (1)(d) and (1)(h)), and 020 (except (3), (9)(i), and (10)). The revisions to Title 47 became State effective July 13, 2018 and were submitted to the EPA by the ODEQ and LRAPA on July 19, 2018. The submitted changes clarify terminology and provide additional controls of outdoor burning activities in Lane County, Oregon.

We are also approving, but not incorporating by reference, the submitted revisions to the LRAPA Title 15 enforcement procedures and civil penalty rule, Sections 001, 005, 015, 018, 020, 025, 030, 035, 040, 045, 055, 057, 060, and 065. The revisions to Title 15 became State effective on September 14, 2018 and were submitted by the ODEQ and LRAPA on September 25, 2018. The submitted changes align LRAPA's Title 15 rule with the ODEQ's Division 12 and provide LRAPA with authority needed for SIP approval.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully Federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Oregon Notice Provision

Oregon Revised Statute 468.126, prohibits ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 22, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a

[1] 62 FR 27968 (May 22, 1997).

petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 4, 2019.

Chris Hladick,

Regional Administrator, Region 10.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

■ 2. In § 52.1970:

■ a. In paragraph (c), table 4 is amended by revising the table heading, the heading for ''Title 47'' and the entries ''47–001'', ''47–005'', ''47–010'', ''47–015'', and ''47–020'' and adding a footnote number 1 to the end of the table.

■ b. In paragraph (e), remove the table ''Lane County Regional Air Pollution Authority Regulations, Approved But Not Incorporated by Reference'' and add in its place the table ''Lane Regional Air Protection Agency (LRAPA) Rules, Approved But Not Incorporated by Reference''.

The revisions and additions read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

TABLE 4—EPA-APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON [1]

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	* *
Title 47—Rules for Outdoor Burning				
47–001	General Policy	7/13/2018	2/20/2019, [insert **Federal Register** citation].	
47–005	Exemptions from these Rules	7/13/2018	2/20/2019, [insert **Federal Register** citation].	
47–010	Definitions	7/13/2018	2/20/2019, [insert **Federal Register** citation].	Except the definition of ''nuisance''.
47–015	Outdoor Burning Requirements	7/13/2018	2/20/2019, [insert **Federal Register** citation].	Except (1)(d) and (1)(h).
47–020	Letter Permits	7/13/2018	2/20/2019, [insert **Federal Register** citation].	Except (3), (9)(i), and (10).
*	*	*	*	* *

[1] EPA's approval is limited to the extent the provisions relate to section 110 of the Clean Air Act and determining compliance with and for purposes of implementation of SIP-approved requirements.

* * * * *

(e) * * *

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LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES, APPROVED BUT NOT INCORPORATED BY REFERENCE

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanation
Title 13—General Duties and Powers of Board and Director				
13–005	Authority of the Agency	3/31/2014	10/5/2018, 83 FR 50274	
13–010	Duties and Powers of the Board of Directors.	3/31/2014	10/5/2018, 83 FR 50274	
13–020	Duties and Function of the Director	3/31/2014	10/5/2018, 83 FR 50274	
13–025	Conflict of Interest	3/31/2014	10/5/2018, 83 FR 50274	
13–030	Advisory Committee	3/31/2014	10/5/2018, 83 FR 50274	
13–035	Public Records and Confidential Information.	3/31/2014	10/5/2018, 83 FR 50274	
Title 14—Rules of Practice and Procedure				
14–110	Definitions	3/23/2018	10/5/2018, 83 FR 50274	

LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES, APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanation
	Rulemaking			
14–115	Rulemaking Notice	3/23/2018	10/5/2018, 83 FR 50274	
14–120	Rulemaking Hearings and Process	3/23/2018	10/5/2018, 83 FR 50274	
14–125	Temporary Rules	3/23/2018	10/5/2018, 83 FR 50274	
14–130	Petition to Promulgate, Amend or Repeal Rule—Content of Petition, Filing of Petition.	3/23/2018	10/5/2018, 83 FR 50274	
14–135	Declaratory Rulings	3/23/2018	10/5/2018, 83 FR 50274	
	Contested Cases			
14–140	Contested Case Proceedings Generally.	3/23/2018	10/5/2018, 83 FR 50274	
14–145	Agency Representation by Environmental Law Specialist.	3/23/2018	10/5/2018, 83 FR 50274	
14–147	Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing.	3/23/2018	10/5/2018, 83 FR 50274	
14–150	Liability for the Acts of a Person's Employees.	3/23/2018	10/5/2018, 83 FR 50274	
14–155	Consolidation or Bifurcation of Contested Case Hearings.	3/23/2018	10/5/2018, 83 FR 50274	
14–160	Final Orders	3/23/2018	10/5/2018, 83 FR 50274	
14–165	Default Orders	3/23/2018	10/5/2018, 83 FR 50274	
14–170	Appeal to the Board	3/23/2018	10/5/2018, 83 FR 50274	
14–175	Power of the Director	3/23/2018	10/5/2018, 83 FR 50274	
14–185	Request for Stay Pending Judicial Review.	3/23/2018	10/5/2018, 83 FR 50274	
14–190	Request for Stay—Motion to Intervene	3/23/2018	10/5/2018, 83 FR 50274	
14–200	Request for Stay—Agency Determination.	3/23/2018	10/5/2018, 83 FR 50274	
14–205	Request for Stay—Time Frames	3/23/2018	10/5/2018, 83 FR 50274	
	Title 15—Enforcement Procedure and Civil Penalties			
15–001	Policy	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–003	Scope of Applicability	6/13/1995	8/3/2001, 66 FR 40616	
15–005	Definitions	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–010	Consolidation of Proceedings	6/13/1995	8/3/2001, 66 FR 40616	
15–015	Notice of Violation	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–018	Notice of Permit Violations (NPV) and Exceptions.	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–020	Enforcement Actions	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–025	Civil Penalty Schedule Matrices	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–030	Civil Penalty Determination Procedure (Mitigating and Aggravating Factors).	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–035	Written Notice of Civil Penalty Assessment—When Penalty Payable.	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–040	Compromise or Settlement of Civil Penalty by Director.	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–045	Stipulated Penalties	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–050	Additional Civil Penalties	6/13/1995	8/3/2001, 66 FR 40616	
15–055	Air Quality Classification of Violation	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–057	Determination of Violation Magnitude	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–060	Selected Magnitude Categories	9/14/2018	2/20/2019, [insert **Federal Register** citation]	
15–065	Appeals	9/14/2018	2/20/2019, [insert **Federal Register** citation]	

LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES, APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanation
Title 31—Public Participation				
31–0070	Hearing Procedures	3/23/2018	10/5/2018, 83 FR 50274	

* * * * *

[FR Doc. 2019–02545 Filed 2–19–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0508; FRL–9989–15–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Under the 2008 Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the State of Maryland's state implementation plan (SIP). The State of Maryland's SIP revision satisfies the volatile organic compound (VOC) reasonably available control technology (RACT) requirements for the 2008 8-hour ozone national ambient air quality standard (NAAQS). The State of Maryland will address RACT for oxides of nitrogen (NO_X) in another SIP submission. Maryland's VOC RACT submittal for the 2008 ozone NAAQS includes certification that previously adopted RACT controls in Maryland's SIP approved by EPA under the 1-hour ozone and 1997 8-hour ozone NAAQS were reviewed based on the currently available technically and economically feasible controls, and that they continue to represent RACT; a negative declaration for certain control technique guideline (CTG) categories that no facilities exist in the State for these certain categories; and adoption of new or more stringent RACT determinations where necessary. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on March 22, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2018–0508. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gregory A. Becoat, (215) 814 2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 18, 2016, the Maryland Department of the Environment (MDE) submitted a revision to its SIP that addresses the VOC requirements of RACT for the 2008 8-hour ozone NAAQS.

I. Background

A. General

Ozone is formed in the atmosphere by photochemical reactions between VOCs and NO_X in the presence of sunlight. In order to reduce ozone, the CAA requires control of VOC and NO_X emission sources to achieve emission reductions in moderate and above ozone nonattainment areas. Among effective control measures, RACT controls significantly reduce VOC and NOx emissions from major stationary sources.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[1] Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_X or VOC emissions greater than a certain ton per year threshold that varies based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. *See* ''major stationary source'' in CAA sections 182(b), 184(b) and 302. Sections 182(b)(2) and 182(f)(1) of the CAA require states with ozone nonattainment areas classified as moderate or higher to implement RACT controls on all stationary sources and source categories covered by a CTG document issued by EPA, and also on all major sources of VOC and NO_X emissions located in the area. EPA's CTGs provide guidance for RACT control requirements for various VOC source categories. The CTGs typically identify a particular control level that EPA recommends as being RACT. In some cases, EPA has issued Alternative Control Techniques guidelines (ACTs), primarily for NO_X source categories, which in contrast to the CTGs, only present a range of possible control options but do not identify any particular option as the recommendation for what can be RACT. Section 183(c) of the CAA requires EPA to revise and update CTGs and ACTs as the Administrator determines necessary. States are required to implement RACT for the source categories covered by CTGs through the SIP.

Section 184(a) of the CAA establishes a single ozone transport region (OTR) comprising all or part of 12 eastern states and the District of Columbia,[2] including the entire State of Maryland. Section 184(b)(1)(B) and (2) of the CAA set forth requirements for states in the OTR. Specifically, section 184(b)(1)(B) requires the implementation of RACT in OTR states with respect to all sources of VOC covered by a CTG. Additionally,

[1] *See* December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas.'' *see also* 44 FR 53761, 53762 (September 17, 1979).

[2] Only a portion of the Commonwealth of Virginia is included in the OTR.

Attachment 16

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER C—DRUGS

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

n-Butyl Chloride Capsules

The Commissioner of Food and Drugs has evaluated a new animal drug application (92-481V) filed by Hart-Delta, Inc., 5055 Choctaw Drive, Baton Rouge, LA 70805, proposing safe and effective use of *n*-butyl chloride capsules as an anthelmintic for dogs. The application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135c is amended in § 135c.77 by redesignating paragraphs (a); (b); and (c)(1), (2)(i), (ii), and (iii), and (3) as paragraph (a)(1), (2), (3)(i), (ii) (*a*), (*b*), (*c*), and (iii), respectively, and by adding a new paragraph (b). As revised, § 135c.77 reads as follows:

§ 135c.77 n-Butyl chloride capsules, veterinary.

(a)(1) *Specifications.* *n*-Butyl chloride capsules, veterinary contain 272 milligrams or 816 milligrams of *n*-butyl chloride in each capsule.

(2) *Sponsor.* See code No. 060 in § 135.501(c) of this chapter.

(3) *Conditions of use.* (i) It is used for the removal of ascarids (*Toxocara canis* and *Toxascaris leonina*) and hookworms (*Ancyclostoma caninum, Ancylostoma braziliense,* and *Uncinaria stenocephala*) from dogs and of the ascarid (*Toxocara cati*) and hookworm (*Ancylostoma tubaeforme*) from cats.

(ii) (*a*) Animals should not be fed for 18 to 24 hours before being given the drug. Puppies and kittens should be wormed at 6 weeks of age. However, if heavily infested, they may be wormed at 4 or 5 weeks of age. Administration of the drug should be followed in ½ to 1 hour with a teaspoonful to a tablespoonful of milk of magnesia or 1 or 2 milk of magnesia tablets. Normal rations may be resumed 4 to 8 hours after treatment. Puppies and kittens should be given a repeat treatment in a week or 10 days. After that they should be treated every 2 months (or as symptoms reappear) until a year old. When the puppy or kitten is a year old, one treatment every 3 to 6 months is sufficient.

(*b*) For dogs or cats that have been wormed regularly, treatment every 3 to 6 months will be sufficient. If a dog or cat has not been wormed previously and has the symptoms of large roundworms a dose should be given and repeated in 10 days. Removal of hookworms may require 3 or 4 doses at 10-day intervals.

(*c*) Puppies, dogs, cats, or kittens weighing 1 to 3 pounds should be given 2 capsules per dose which contain 272 milligrams of *n*-butyl chloride each. Such animals weighing 4 to 5 pounds should be given 3 such capsules. Animals weighing 6 to 7 pounds should be given 4 such capsules and animals weighing 8 to 9 pounds should be given 5 such capsules. Animals weighing 10 to 20 pounds should be given 3 capsules which contain 816 milligrams of *n*-butyl chloride each, animals weighing 20 to 40 pounds should be given 4 such capsules and animals weighing over 40 pounds should be given 5 such capsules with the maximum dosage being 5 capsules, each of which contains 816 milligrams of *n*-butyl chloride.

(iii) A veterinarian should be consulted before using in severely debilitated dogs or cats and also prior to repeated use in cases which present signs of persistent parasitism.

(b)(1) *Specifications.* *n*-Butyl chloride capsules, veterinary contain 221, 442, 884, or 1,768 milligrams or 4.42 grams of *n*-butyl chloride in each capsule.

(2) *Sponsor.* See code No. 102 in § 135.501(c) of this chapter.

(3) *Conditions of use.* (i) It is used for the removal of ascarids (*Toxocara canis* and *Toxascaris leonina*) and hookworms (*Ancylostoma caninum, Ancylostoma braziliense,* and *Uncinaria stenocephala*) from dogs.

(ii) (*a*) Dogs should not be fed for 18 to 24 hours before being given the drug. Administration of the drug should be followed in ½ to 1 hour with a mild cathartic. Normal rations may be resumed 4 to 8 hours after treament.

(*b*) The drug is administered orally to dogs. Capsules containing 221 milligrams of *n*-butyl chloride are administered to dogs weighing under 5 pounds at a dosage level of 1 capsule per 1¼ pound of body weight. Capsules containing 442 milligrams of *n*-butyl chloride are administered to dogs weighing under 5 pounds at a dosage level of 1 capsule per 2½ pounds body weight. Capsules containing 884 milligrams of *n*-butyl chloride are administered to dogs as follows: Weighing under 5 pounds, 1 capsule; weighing 5–10 pounds, 2 capsules; weighing 10–20 pounds, 3 capsules; weighing 20–40 pounds, 4 capsules; over 40 pounds, 5 capsules. Capsules containing 1,768 milligrams of *n*-butyl chloride are administered at a dosage level of 1 capsule per dog weighing 5–10 pounds. Capsules containing 4.42 grams of *n*-butyl chloride are administered at a dosage level of 1 capsule per dog weighing 40 pounds or over.

(iii) A veterinarian should be consulted before using in severly debilitated dogs.

Effective date. This order shall be effective on April 15, 1974.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 9, 1974.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.74-8519 Filed 4-12-74;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

PART 600—STATEMENT OF PROCEDURAL RULES

CFR Correction

In the April 1, 1973, edition of 26 CFR Parts 600 to End, the FEDERAL REGISTER page citation in the second line of the effective date note following § 601.601 (page 102), now reading "37 FR 8246", should read "38 FR 8246".

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF STATE IMPLEMENTATION PLANS

Ohio

On January 31, 1972, the Governor of Ohio submitted the "Implementation Plan for the Control of Suspended Particulates, Sulfur Dioxide, Carbon Monoxide, Hydrocarbons, Nitrogen Dioxide, and Photochemical Oxidants in the State of Ohio" to the Administrator of the Environmental Protection Agency. The plan was adopted by the Ohio Air Pollution Control Board following public hearings held on January 18, 1972, in Columbus, Ohio. This plan was submitted pursuant to section 110 of the Clean Air Act, as amended, which requires States to adopt implementation plans to achieve and maintain the national ambient air quality standards (40 CFR Part 50). On May 31, 1972 (37 FR 10842), the Administrator approved the Ohio plan with specific exceptions. Subsequently, amendments were submitted which permitted full approval of the plan on September 22, 1972 (37 FR 19806).

On June 28, 1973, the United States Court of Appeals for the Sixth Circuit decided the case of Buckeye Power Company, et al. v. EPA, 481 F.2d 162. The court vacated the Administrator's approval of the Ohio plan and remanded the case to the Agency for compliance with section 553 of the Administrative Procedure Act, as articulated in the court's opinion, viz., to take comments, data or other evidence from interested parties, and to express the basis for administrative actions.

On August 27, 1973, the Governor of Ohio withdrew from the proposed Ohio plan the control strategy and regulations for control of sulfur oxides. Accordingly, the plan as of this date contains control strategies designed to achieve the national primary ambient air quality standards for particulate matter, carbon monoxide, hydrocarbons, nitrogen oxides and photochemical oxidants throughout the State of Ohio no later than mid-1975 and to achieve the secondary particulate standards in Ohio with the exception of the Metropolitan Cleveland Intrastate Region (Cleveland) and the Ohio portions of the Northwest Pennsylvania-

Youngstown Interstate Region (Youngstown) and the Steubenville-Weirton-Wheeling Interstate Region (Steubenville). It is anticipated that a new control strategy to achieve national standards for sulfur oxides will be submitted by the Governor of Ohio in the near future. Upon submission, the plan will be published as proposed rule-making for public comments prior to final approval or disapproval.

PUBLIC COMMENT

On November 15, 1973 (38 FR 31542), the Administrator published as proposed rule-making the extant provisions of the Ohio implementation plan and requested public comment thereon. Several responses were received and the major issues and EPA responses thereto can be summarized as follows:

(1) It was suggested that a public hearing be held to consider approval of the plan because of the importance of the proposed action. The Environmental Protection Agency believes that sufficient opportunity for public impact on the plan has been provided by the State public hearing and the Federal public comment period held in accordance with the requirements of section 553 of the Administrative Procedure Act. In this regard, oral presentations are not required (5 U.S.C. 553(c) (1967)).

(2) It was alleged that particulate control is inextricably interwoven with sulfur dioxide control. The Environmental Protection Agency feels that such interdependence does not prevail for the majority of sources. In those exceptional instances where particulate and sulfur dioxide control problems are interdependent, procedures are available to consider any compliance difficulties on a case-by-case basis.

(3) It was suggested that the particulate and hydrocarbon control strategies of the plan be disapproved because the control provisions are more stringent than necessary to achieve national standards for several areas of the State. Section 110(a) of the Clean Air Act (42 U.S.C. 1857c-5) requires the Administrator to approve a plan, or portion thereof, if he determines that it meets the requirements listed in section 110(a)(2)(A)–(H). Implementing regulations in 40 CFR Part 51 (Requirements for Preparation, Adoption and Submission of State Implementation Plans) require each State to develop control strategies adequate to attain and maintain the national ambient air quality standards. By definition, a plan with measures more stringent than necessary to achieve the national standards will meet these requirements.

Furthermore, section 116 of the Act (42 U.S.C. 1857d-1) preserves the right of States to adopt and enforce whatever standards, emission limitations or control requirements deemed necessary providing they are as stringent as Clean Air Act and 40 CFR Part 51 requirements. Taken together, the statutory and regulatory provisions clearly preclude the Administrator from disapproving a State plan in which control provisions may be more stringent than necessary to achieve national standards in a particular area.

(4) Several representatives of fuel-burning sources commented that it is impossible to comply with the requirements of AP-3-07 (Control of visible air contaminants from stationary sources) during periods of startup, shut-down and malfunction. While the agency is aware of the merits of this argument, AP-3-07, to the extent that it may under certain conditions be a form of control more stringent than necessary to achieve the national standards, is subject to the same arguments presented in Item (3) above, and, on that basis, can not be disapproved.

(5) It was claimed that many sources will be unable to comply with the July 1, 1975, date for compliance with the regulations because of lengthy time requirements for installing new control equipment. The State regulations have been in effect since early 1972 and a three-year compliance time frame is generally deemed adequate for installing needed control systems. If special problems exist, procedures are available for case-by-case consideration.

(6) Several comments noted that nitrogen dioxide emission limitations were unnecessary because the Environmental Protection Agency has proposed reclassifying all Ohio air quality control regions as Priority III. Even if the Ohio Nitrogen Dioxide Plan constitutes control more stringent than necessary to achieve the national standards, the Administrator may not disapprove the plan for reasons presented in Item (3) above. When the Environmental Protection Agency has completed reclassification of regions for nitrogen dioxide, Ohio may wish to consider revising or removing the existing emission regulations from the applicable plan.

(7) The hydrocarbon and carbon monoxide control regulations were criticized for requiring immediate compliance. While the Environmental Protection Agency recognizes the wisdom of regulating compliance by means of a schedule, immediately enforceable regulations do not per se constitute grounds for disapproval. The Environmental Protection Agency has noted that variance procedures adopted by Ohio can be used to permit the operation of sources during the period necessary to achieve compliance with the regulations.

(8) Other comments concerned economic infeasibility of control requirements and lack of attention to cost-effectiveness in the plan. While the Environmental Protection Agency is concerned that no serious economic dislocation be created as a result of emission controls, there is no provision for disapproval on such a basis within the § 110(a) requirements. It is the position of the Environmental Protection Agency that any serious difficulties of compliance can be resolved through utilization of available State and Federal procedures.

(9) Additional comments concerned the feasibility of a sulfur dioxide control strategy. Inasmuch as no such strategy has been proposed by the State, these comments will be addressed when EPA takes action on the sulfur dioxide control strategy.

APPROVAL COMMENTS

The Ohio Implementation Plan meets the requirements of Section 110 of the Clean Air Act, as amended, and the regulations for Preparation, Adoption, and Submittal of Implementation Plans in 40 CFR Part 51, and is approved with four exceptions.

The first exception relates to requirements for review of indirect sources as promulgated by the Administrator on June 18, 1973 (38 FR 15834). The State was required to submit a plan revision by August 15, 1973. No submission has been received from Ohio and on October 30, 1973 (38 FR 29893), the Environmental Protection Agency reaffirmed its March 8, 1973 (38 FR 6279), disapproval of all State plans for lack of procedures to review construction of indirect sources. At the same time the Administrator proposed a Federal regulation to correct this plan deficiency in Ohio as well as many other States. The Environmental Protection Agency conducted a public hearing in Columbus on November 30, 1973, on the proposed regulation and a final version was promulgated on February 25, 1974 (39 FR 7270). Meanwhile, the disapproval notice pertaining to new indirect source review procedures required by 40 CFR 51.18 remains unaffected by this notice. The February 25, 1974, publication also provided for a disapproval relating to § 51.12(g), air quality maintenance plan requirements for all States; this disapproval remains in effect.

The second exception relates to the adequacy of the control strategy and regulations for control of sulfur oxides. Because the Governor of Ohio withdrew the originally submitted control strategy and regulations for control of sulfur oxides, the plan must be noted as deficient in that respect. However, the Ohio Environmental Protection Agency is adopting a new strategy and regulations for the control of sulfur oxides and submittal as a plan revision is forthcoming. The Environmental Protection Agency is, therefore, not proposing a sulfur oxides control strategy at this time.

The third exception concerns plans to attain secondary standards for particulate matter in certain air quality control regions and the fourth exception relates to public comment procedures on review of new or modified sources; these exceptions are more fully described below.

A detailed description of the plan approval is set forth as follows: The originally published plan of May 31, 1972, contained a classification of regions (§ 52.1871) and attainment dates for national standards (§ 52.1875). These sections are retained with this publication. From time to time, § 52.1870 Identification of plan has been amended as new submissions have been made. This section is retained as originally published

on May 31, 1972, together with any subsequent amendments. Sections 52.1874 and 52.1876 have previously been revoked.

With regard to requirements of 40 CFR Part 51, the Administrator has made the following determinations: The plan strategy to achieve national standards for particulate matter by implementation of Ohio regulations AP–3–01, Definitions; AP–3–06, Classification of Regions; AP–3–07, Control of Visible Air Contaminants from Stationary Sources; AP–3–08, Open Burning Prohibited; AP–3–09, Restriction of Emission of Fugitive Dust and Gases; AP–3–10, Restriction on Emissions from Incinerators; AP–3–11, Restriction on Emission of Particulate Matter from Fuel Burning Equipment; and AP–3–12, Restriction of Emission of Particulate Matter from Industrial Process; meets the appropriate requirements of 40 CFR 51.13 and 51.22. Utilizing the example region approach for the particulate matter strategy development, EPA has determined that the 80 percent emission reduction obtainable by implementation of the above-cited regulations will be adequate to achieve the primary standards statewide.

The strategy will also achieve the secondary standards throughout the State, with the exception of the Youngstown, Cleveland and Steubenville regions. On May 31, 1972, when the Ohio plan was originally approved, the Administrator granted 18-month extensions for submission of plans to achieve the secondary standards for particulate matter in the Youngstown, Cleveland, and Steubenville regions (40 CFR 52.1872(a)). The time for submission of these plans expired July 31, 1973, and retention of the extension provision by this publication does not alter that expiration date. On January 25, 1974, the required plans were submitted by the State of Ohio; the submission will be published as proposed rule-making before the Administrator approves or disapproves it. Although a disapproval notice will be published at this time, a substitute strategy will not be proposed for attainment of secondary standards for particulate matter in the above-identified regions unless review of the State submission indicates a substitute strategy will be necessary.

The application of the emission limitations per the P–2 curve in AP–3–11(B)(3) and AP–3–12(B)(3) and the P–3 curve in AP–3–12(B)(4) of the Ohio regulations to sources of particulate matter in Priority II and III regions will achieve secondary standards with a sufficient amount of leeway to provide for maintenance of these standards as well. In a letter from the Director of the Ohio EPA, dated June 6, 1973, the State indicates that the portions of regulations AP–3–11(B)(4) and AP–3–12(B)(5) requiring sources in Priority II and III regions to achieve an additional emission reduction have been submitted for informational purposes only. Therefore, these requirements will not be deemed a part of the applicable implementation plan for the State of Ohio.

The plan strategy to achieve the national standards for photochemical oxidants (hydrocarbons) by implementation of Ohio regulations AP–5–01, Definitions; AP–5–06, Classification of Regions; AP–5–07, Control of Emission of Organic Materials from Stationary Sources, meets the appropriate requirements of 40 CFR 51.14 and 51.22. EPA has determined that the 40% reduction obtainable by implementation of the above-cited regulations will be adequate to achieve the national standards insofar as control of stationary sources is required.

Ohio submitted plans to achieve the photochemical oxidant standards in the Metropolitan Dayton Intrastate Region (Dayton) on July 24, 1973, and in the Ohio portions of the Metropolitan Cincinnati Interstate (Cincinnati) and the Metropolitan Toledo Interstate (Toledo) regions on June 29, 1973. These plans were published on August 15, 1973 (38 FR 22045), as proposed rulemaking and final action approving the Dayton and Toledo plans was taken on November 8, 1973 (38 FR 30971). On November 8, EPA also disapproved the deficiencies in the transportation plan for the Cincinnati region and promulgated substitute regulations. An oversight correction is being made to change the citation of § 51.15 to § 51.14 in the November 8 promulgation of § 52.1877. Today's action, together with the action taken on November 8, constitute the complete Federal plan for attainment and maintenance of national standards for photochemical oxidants (hydrocarbons).

The plan strategy to achieve the national standards for carbon monoxide by implementation of Ohio regulations, AP–5–06, Classification of Regions and AP–5–08, Control of Carbon Monoxide Emissions from Stationary Sources, meets the appropriate requirements of 40 CFR 51.14 and 51.22. Expected emission reductions on affected stationary sources of approximately 80 percent have been determined by the Administrator to be adequate to achieve the national standards.

The plan strategy to achieve the national standard for nitrogen dioxide by implementation of Ohio Regulations AP–7–05, Classification of Regions and AP–7–06, Control of Nitrogen Oxide Emissions from Stationary Sources meets the appropriate requirements of 40 CFR 51.14 and 51.22. Expected emission reductions have been determined by the Administrator to be adequate to achieve the national standard.

All of the regulations comprising the control strategies are immediately effective, thus meeting the requirements of 40 CFR 51.15.

The plan description of Ohio's ambient air monitoring program and source surveillance procedures meets the requirements of 40 CFR 51.17 and 40 CFR 51.19.

The plan presentation of Ohio's legal authority to carry out the provisions of the plan meets the requirements of 40 CFR 51.11. In addition, the plan description of the legal authority needed by local governmental units to carry out assigned roles and of interstate cooperation agreements is approved as meeting the requirements of 40 CFR 51.21.

The description of resources available to carry out the plan meets the requirements of 40 CFR 51.20. The procedures to require self-monitoring by a source in Ohio regulations AP–9–02 and AP–9–03, the procedures to require submission of emission information in Ohio regulation AP–2–03, and the procedures to make emission data available to the public in Ohio regulation AP–9–03 meet the requirements of 40 CFR 51.19 and 51.10(e). The procedures to implement control plans in case of emergency episode situations in AP–11–01, AP–11–02, AP–11–03, and AP–11–04 of the Ohio Regulations meet requirements of 40 CFR 51.16.

Review procedures provided in Ohio regulation AP–9–02 satisfy the requirements of 40 CFR 51.18 with the exception of paragraph (h) relating to public comment procedures and paragraph (a) with respect to review of indirect sources as noted above. Since Ohio regulations do not provide for public comment on review of new or modified sources a disapproval notice is published today together with a corrective regulation requiring the State to provide for public comment as part of its new source review procedure. The Administrator finds good cause for promulgating this correction without having first proposed it, since the substantive rights of those seeking permits to construct or modify sources are not affected and such procedures are clearly required by 40 CFR 51.18, which was previously available for public comment prior to promulgation. Furthermore, it is in the public interest to cause a procedure for allowing public comment on State actions affecting the environment to be instituted. The Administrator will accept written comments on the public comment requirement postmarked not later than May 15, 1974. Changes to the regulation will be made, where appropriate, based on the comments received.

The rules and regulations submitted meet the requirements of 40 CFR 51.22. All of the substantive provisions thereof, as identified in this notice of approval, become part of the applicable implementation plan for the State of Ohio, subject to the exceptions noted herein.

More detailed information supporting this decision is available in the "Evaluation Report of the Ohio Implementation Plan," which may be examined at the Freedom of Information Center, EPA, Room 329, 401 M Street, S.W., Washington, D.C., and at the Program Support Branch, EPA, Region V, 1 North Wacker Drive, Chicago, Illinois 60606.

This notice of final rulemaking is is-

sued under the authority of section 110 of the Clean Air Act (42 U.S.C. 1857c-5).

Dated: April 8, 1974.

JOHN QUARLES,
Acting Administrator.

Part 52 of Chapter I, Title 40, of the Code of the Federal Regulations is amended as follows:

Subpart KK—Ohio

1. Section 52.1870 is amended by adding paragraph (c) (4) as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(4) June 6, 1973, by the Director, Ohio Environmental Protection Agency.

2. Section 52.1873 is revised to read as follows:

§ 52.1873 Approval status.

With the exceptions set forth in this subpart, the Administrator approves Ohio's plan for the attainment and maintenance of the national standards. The State included various provisions in its plan relating to AP-3-11(B) (4) and AP-3-12(B) (5) which, as described in the Governor's letter of June 6, 1973, were included for information purposes only and were not to be considered a part of the plan to implement national standards. Accordingly, these additional provisions are not considered a part of the applicable plan.

§ 52.1877 [Amended]

3. Section 52.1877 is amended by changing the citation of § 51.15 to § 51.14.

4. Section 52.1879 is amended by adding paragraphs (c) and (d) as follows:

§ 52.1879 Review of new sources and modifications.

* * * * *

(c) The requirements of § 51.18(h) of this chapter are not met because the State failed to submit procedures providing for public comment on review of new or modified stationary sources.

(d) Regulation providing for public comment. (1) For purposes of this paragraph, "Director" shall mean the "Director of the Ohio Environmental Protection Agency".

(2) Prior to approval or disapproval of the construction or modification of a stationary source, the Director shall:

(i) Make a preliminary determination whether construction or modification of the stationary source should be approved, approved with conditions or disapproved;

(ii) Make available in at least one location in the region in which the proposed stationary source would be constructed or modified, a copy of all materials submitted by the owner or operator, a copy of the Director's preliminary determination, and a copy or summary of other materials, if any, considered by the Director in making his preliminary determination; and

(iii) Notify the public, by prominent advertisement in a newspaper of general circulation in the region in which the proposed stationary source would be constructed or modified, of the opportunity for public comment on the information submitted by the owner or operator and the Director's preliminary determination on the approvability of the new or modified stationary source.

(3) A copy of the notice required pursuant to this paragraph shall be sent to the Administrator through the appropriate regional office and to all other State and local air pollution control agencies having jurisdiction within the region where the stationary source will be constructed or modified.

(4) Public comments submitted in writing within 30 days of the date such information is made available shall be considered by the Director in making his final decision on the application.

5. Sections 52.1880 and 52.1881 are added as follows:

§ 52.1880 Control strategy: Particulate matter.

(a) The requirements of § 51.13 of this chapter are not met because the Ohio plan does not provide for attainment and maintenance of the secondary standards for particulate matter in the Greater Metropolitan Cleveland Intrastate Region and the Ohio portions of the Northwest Pennsylvania-Youngstown and the Steubenville-Weirton-Wheeling Interstate Regions.

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) The requirements of § 51.13 of this chapter are not met because the Ohio plan does not provide for attainment and maintenance of the national standards for sulfur oxides (sulfur dioxide).

[FR Doc.74-8576 Filed 4-12-74;8:45 am]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Southwest Pennsylvania AQCR, Gasoline Transfer Vapor Control

On November 28, 1973, the Environmental Protection Agency, acting under court order, promulgated a number of transportation control measures for the Southwest Pennsylvania Intrastate Air Quality Control Region. Among these measures was a regulation requiring vapor recovery devices, capable of reducing hydrocarbon emissions by 90 percent, to be installed for use during the transfer of gasoline between delivery trucks and storage tanks at service stations and elsewhere.

The gasoline transfer vapor control regulation is applicable to gasoline transfer operations in the Allegheny County portion of the Southwest Pennsylvania Intrastate AQCR. Public comment on this regulation, as well as on the other measures promulgated, was invited by the Environmental Protection Agency for an additional thirty days from the date of promulgation. The Associated Petroleum Industries of Pennsylvania did submit a number of thoughtful comments within the thirty day period.

One specific comment from the Associated Petroleum Industries referred to a portion of the gasoline transfer vapor control regulation which provides that gasoline delivery vehicles "may be refilled only at facilities equipped with a vapor recovery system, or the equivalent, which can recover at least 90 percent by weight of the organic compounds in the vapors displaced from the delivery vessel during refilling." The Associated Petroleum Industries pointed out that it is unclear whether this provision applies to reloading at facilities in Allegheny County, the Southwest Pennsylvania Intrastate AQCR, or to reloading at any facility regardless of geographical location. The regulation is, therefore, being amended today to indicate that the restriction against reloading a delivery vehicle at facilities not equipped with the specified vapor recovery system applies only to reloading within the Southwest Pennsylvania Intrastate Air Quality Control Region.

It should be noted that even though attainment of photochemical oxidant (hydrocarbon) standards can be achieved in the Southwest Pennsylvania Intrastate AQCR by control only of the service stations within the Allegheny County portion of the Region, the control of the so-called "bulk loading" facilities at which gasoline delivery vehicles reload, is necessary on an AQCR-wide basis. This control is necessary because unlike carbon monoxide pollution, which builds up in a fairly localized area surrounding the point of emission, photochemical oxidant pollution is an area-wide phenomenon in which hydrocarbon emissions at any point in the Southwest Pennsylvania Region, a natural air basin, may result in high oxidant levels at far distant points within the Region. Therefore, if the vapor collected within Allegheny County were released outside the County but within the AQCR, the oxidant levels in Allegheny County may well not be reduced at all. Without bulk facility control on an AQCR-wide basis, nothing may be gained.

The Associated Petroleum Industries also pointed out that reference was made in the vapor control regulation to an additional regulation controlling gas transfer vapor emissions. The regulation had been in an earlier draft of the Southwest Pennsylvania promulgation, but had subsequently been found to be unnecessary and was deleted. Therefore, the reference should also have been deleted and is today being deleted.

In view of the fact that this notice simply makes clear previously ambiguous provisions and in view of the fact that substantial prior opportunities for comment on these provisions have been given, the Administrator finds that good cause exists for making these amendments effective April 15, 1974. It should be noted to avoid confusion that the effective date is merely the date on which the amendments become an official part of the regulation. It is not the date for

ATTACHMENT B

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VIA ELECTRONIC MAIL

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Re: Removal of the Public Nuisance Provision from the Ohio State Implementation Plan

Dear Mr. Mooney and Mr. Nelson:

Thank you for meeting on October 1, 2019 to discuss correcting the Ohio state implementation plan ("SIP") to remove the public nuisance rule (OAC 3745-15-07) ("nuisance rule"). As we discussed at the meeting, the nuisance rule is a general rule prohibiting public nuisances. It has no connection with the purposes for which SIPs are developed and approved, no reasonable connection with the National Ambient Air Quality Standards ("NAAQS"), and has not been used by Ohio as part of its NAAQS control strategy. As such, the nuisance rule should not have been included in the SIP when it was approved by EPA in 1972 and then again in 1974.

Now that EPA is aware of the error, the SIP should be corrected using EPA's authority under Clean Air Act ("CAA") Section 110(k)(6), as EPA has done in numerous other instances. Using the agency's authority under CAA Section 110(k)(6) to remove the nuisance rule will conserve agency resources and expediently correct an error that has had unintended consequences for businesses in Ohio.

1. The Ohio Nuisance Rule Is Not Reasonably Related to Attainment and Maintenance of the NAAQS in Ohio

In 1979, after the 1977 Amendments to the Clean Air Act, EPA was in the process of reviewing many States' SIP submissions. At that time, EPA's Office of General Counsel ("OGC") advised its Regional Counsel that States' measures that either control non-criteria air pollutants or are not sufficiently related to the State's strategy for the attainment and maintenance of the NAAQS, may not legally be included in SIPs.[1] Over the past twenty years, numerous SIPs have been corrected to remove nuisance rules similar to Ohio's and other general air pollution control rules consistent with EPA's guidance.

The Ohio nuisance rule is most similar to the nuisance rules in California, Michigan, and Georgia, all of which were removed from the SIP using CAA Section 110(k)(6). The Ohio rule provides that:

> [t]he emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.

The nuisance rule does not identify criteria air pollutants, require any particular reductions or controls, establish limits or standards, and reductions in emissions from compliance with the nuisance rule are not quantified or accounted for in the State's attainment demonstration. The Ohio rule is the classic example of a general prohibition on air pollution that bears no relation to reductions in NAAQS regulated pollutants.

Most recently, EPA issued a technical correction to the California SIP, to remove numerous local nuisance rules very similar to the Ohio nuisance rule that were "approved in error." 84 Fed. Reg. 45422, 45422 (August 29, 2019). In each case, the local rule prohibits the discharge of "air contaminants or other material which cause injury, detriment, nuisance, or annoyance . . . ." 83 Fed. Reg. 43577 (August 27, 2018); *see, e.g.*, Amador County APCD Rule 205 (nuisance); Butte County AQMD Section 2-1 (nuisance). EPA determined that the local

[1] Memorandum from Michael James, Associate General Counsel of EPA's Air, Noise, and Radiation Division to Regional Counsels and Air Branch Chief regarding "Status of State/Local Air Pollution Control Measures not related to NAAQS," February 9, 1979 ("OGC Memo").

nuisance rules were included in error because they are general prohibitions against air pollution and not part of the districts' NAAQS control strategies. *Id.* at 43576-77.

Michigan's Rule 901 was removed from Michigan's SIP in 1999 for similar reasons. EPA determined that Rule 901 is "a general rule that prohibits the emission of an air contaminant which is injurious to human health or safety . . . or which causes unreasonable interference with the comfortable enjoyment of life or property." 64 Fed. Reg. 7790, 7791 (Feb. 17, 1999). In using its authority to correct the Michigan SIP under CAA Section 110(k)(6), EPA explained that it was removing the nuisance rule from the SIP because it primarily has been used to address odors and other nuisances and "the rule does not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the Clean Air Act." *Id.*

Likewise, Georgia's nuisance rule was removed from the SIP pursuant to CAA Section 110(k)(6) "because the rule is not related to the attainment and maintenance of the NAAQS." 71 Fed. Reg. 13551, 13552 (March 16, 2006).

Ohio's nuisance rule is no different than the California, Michigan, Georgia and other nuisance rules that have been removed from SIPs. The Ohio nuisance rule prohibits undefined quantities of "smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances . . . ." Similarly, the Michigan nuisance rule (Mich. Admin. Code R 336.1901) prohibits "air contaminants," defined as "dust, fume, gas, mist, odor, smoke, vapor, or any combination thereof." *Id.* at R 336.1101(f). The Georgia nuisance rule (Ga. Comp. R. & Regs. 391-3-1-.02(2)(a)(1)) also prohibits "air contaminants", including but not limited to "solid or liquid particulate matter, dust, fumes, gas, mist, smoke, or vapor . . . ." *Id.* at 391-3-1-.01(c). And many of the local rules removed from the California SIP prohibit "air contaminants," which are defined, for example, to include "smoke, dust, charred paper, soot, grime, carbon, noxious acids, fumes, gases, odors, or particulate matter." Amador County APCD Rule 102 (definition of "air contaminant or pollutant"); Amador County APCD Rule 205 (nuisance).

The term "air contaminant," as used in the California, Michigan, Georgia, and other nuisance rules, matches the list of substances regulated in the Ohio nuisance rule, i.e., "smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances." *Cf., e.g.*, N.Y. Comp. Codes R. & Regs. tit. 6, § 211.1 (general prohibition on the emission of "air contaminants," defined at § 200.1 to include "chemical[s], dust, compound[s], fume[s], gas[es], mist, odor[s], smoke, vapor[s], pollen or any combination thereof"). There is nothing unique about the substances regulated under the Ohio nuisance rule.

During our meeting, EPA asked whether the reference to "dust" in the Ohio nuisance rule could be viewed as controlling particulate matter or whether the reference to "acids" could be viewed as controlling sulfur dioxide emissions. While it is possible that prohibiting undefined quantities of dust and acids has the incidental effect of reducing some quantity of PM or SO2, reducing criteria air pollutants is not the purpose of the rule and the rule is not sufficiently prescriptive to be used by Ohio as part of its NAAQS control strategy for PM or SO2. If the incidental control of criteria air pollutants was sufficient to make a rule part of the State NAAQS control strategy, EPA would not have been able to make the corrections it did to the California, Georgia, Michigan, and numerous other SIPs.

As a practical matter, it is impossible for Ohio to quantify reductions in criteria air pollutant emissions attributable to the nuisance rule based on the vague language in the rule, and Ohio has not done so. Compliance with the nuisance rule can only be determined through case-by-case adjudications of subjective factors, without any pre-defined compliance test methods. Compare the citizen suit provision in CAA Section 304, which requires that a claim must be premised on an enforceable emission standard or limitation to be cognizable, stating in part that "Section 304 would not substitute a 'common law' or court-developed definition of air quality." S. Rep. No. 91-1196, at 36, 37-38 (1970). Unlike CAA Section 110(a)(2), the nuisance rule does not limit "the quantity, rate, or concentration of emissions of air pollutants on a continuous basis" to enable a State to rely on it for purposes of its NAAQS demonstration. At least this level of specificity is also needed for States to be able to demonstrate that they are attaining and maintaining compliance with the NAAQS.

To violate the Ohio nuisance rule, a source must emit enough smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or other substances to "endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property." OAC 3745-15-07. The rule provides no objective or quantitative measure of the amount of emissions that would endanger the public or unreasonably injure or damage property. For this reason, the nuisance rule is not sufficiently prescriptive to be used by Ohio to meet its legal obligation to demonstrate the attainment and maintenance of the NAAQS.

In contrast, there are provisions in the Ohio SIP expressly intended to control criteria air pollutant emissions, including nitrogen oxides, particulate matter, and sulfur dioxide. *See, e.g.*, OAC 3745-14, nitrogen oxides; OAC 3745-17, particulate matter; OC 3745-18, sulfur dioxide. They specify the quantity, rate, or concentration of each air pollutant that may be emitted and Ohio uses these provisions as part of the State NAAQS control strategy and in the attainment demonstration. The nuisance rule is entirely different from the pollutant specific limits used by Ohio to demonstrate attainment and maintenance of the NAAQS.

2. EPA Should Use Its CAA Section 110(k)(6) Authority to Correct the Error

CAA Section 110(k)(6) (Corrections), is the mechanism to be used by EPA to correct an error in a SIP approval. As you know, it provides that, whenever EPA determines that its "action approving, disapproving, or promulgating any plan or plan revision (or part thereof) . . . was in error, [EPA] may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate *without requiring any further submission from the State*." 42 U.S.C. § 7410(k)(6) (emphasis added). It authorizes EPA to correct a SIP where "(1) EPA clearly erred in failing to consider or inappropriately considered information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate; and (2) other information persuasively supports a change in the regulation." *See* 57 Fed. Reg. 56762, 56763 (November 30, 1992).

In contrast, CAA Section 110(k)(5) (Calls for Plan Revisions) is to be used when EPA determines that a SIP is inadequate to attain or maintain compliance with the NAAQS. Under CAA Section 110(a)(2)(h), State plans must provide for revisions from time to time as may be necessary to account for revisions to NAAQS standards and when EPA determines that the SIP is substantially inadequate to attain the NAAQS. Section 110(l) (Plan Revisions) describes the mechanics of doing so. In addition to being the legally correct vehicle to be used to correct an error in a SIP approval, Section 110(k)(6) has the advantage of being the fastest mechanism and conserves agency resources while affording the public the opportunity for notice and public comment.

Using Section 110(k)(6) to revise the SIP is also consistent with the OGC Memo.[2] As EPA's General Counsel recognized at the time, States "may not always differentiate between their regulations to control criteria pollutants and their air pollution control regulations in general." *Id.* EPA's General Counsel advised EPA that it should differentiate if the State does not and that EPA should not act on an identified non-criteria pollutant measure because it cannot legally be part of the SIP. The OGC Memo directs EPA to prevent errors in the SIP, even when they are the result of an error in the State submission. Therefore, EPA should use Section 110(k)(6) to correct its error even though Ohio erred by including the nuisance rule in its plan submission.

During our meeting, EPA asked if Ohio intended for the nuisance rule to remain a part of the SIP when, in 1984, it removed odors from the rule (OAC 3745-15-07(B)) but left the general

[2] OGC Memo, *supra* note 1.

nuisance provision in OAC 3745-15-07(A). The reason Ohio's SIP was revised in 1984 to narrow the scope of the nuisance rule was explained in Am. Sub. SB 78, enacted by the 139th General Assembly, effective June 29, 1982 (copy attached). That legislation excluded "agricultural production activities" from Ohio EPA's jurisdiction under the Ohio Air Pollution Control Act, by amending the definition of "air contaminant" in Section 3704.01(B) of the Ohio Revised Code.

The only Ohio EPA air pollution rule that applied to "agricultural production activities" at the time was the nuisance rule, OAC 3745-15-07. Since "agricultural production activities" were not subject to regulation under Chapters 3745-17, -18, -21, or -31, odors from "agricultural production activities" were not subject to OAC 3745-15-07 as amended in 1982. Eliminating the applicability of the nuisance rule to odors from "agricultural production activities" did not reflect a judgment on the part of Ohio EPA that the remaining provisions of OAC 3745-15-07 were related to attainment and maintenance of the NAAQS. The SIP had to be revised to comply with the General Assembly mandate to exempt agricultural operations and did not reflect any determination that the odor provisions were not appropriately included in the SIP. Importantly, OAC 3745-15-07 still applies to odors from the vast majority of sources in Ohio, i.e., those sources subject to regulation under OAC Chapters 3745-17, -18, -21, or -31.

As we also discussed, Ohio submitted a request to modify the SIP in 1999 to remove the nuisance rule. Ohio would not have requested that the nuisance rule be removed from the SIP if the nuisance rule were part of its NAAQS control strategy.

3. The Removal of the Nuisance Rules Will Not Lessen Environmental Protection in Ohio

Removing the nuisance rule from the SIP will not lessen environmental protection in Ohio or its local neighborhoods. As EPA noted when it removed a similar provision from the Michigan SIP, "[a]lthough Rule 901 will be removed from the SIP, Rule 901 will remain as a state rule and still be enforceable at the State level." 64 Fed. Reg. 7790, 7791 (Feb. 17, 1999). EPA also noted that the regulations intended to attain the NAAQS will still be federally enforceable and the State and EPA retain the ability to take action under Section 303 of the CAA to prevent an imminent and substantial endangerment. *Id.* For the same reasons, correcting the Ohio SIP will not lessen environmental protection in Ohio.

4. Conclusion

There is no evidence that the former Ohio Air Pollution Control Board, in 1972 when the nuisance rule (then AP-02-07) was submitted, or in 1974 when the nuisance rule was approved as part of the SIP, determined that the nuisance rule was "necessary or appropriate" to attain and maintain the NAAQS. Since then, there is no evidence that Ohio has relied on the nuisance rule in any attainment demonstration or otherwise considers the nuisance rule to be part of its NAAQS control strategy.

Accordingly, EPA's May 31, 1972 and April 15, 1974 approvals of Ohio's SIP were in error. As EPA has done in other States, it should correct the error using CAA Section 110(k)(6) to conserve agency resources and expedite the correction of an error that has had the unintended consequence of harming businesses in Ohio.

Very truly yours,

LeAnn Johnson Koch

Attachment

cc: Cheryl Newton (via electronic mail)
Kurt Thiede, Esq. (via electronic mail)

(Amended Substitute Senate Bill No. 78)

AN ACT

To amend sections 303.21, 519.21, 1525.11, 1525.12, 1525.13, 3704.01, 3767.13, and 4906.10 and to enact sections 929.01 to 929.05 and 6111.034 of the Revised Code to permit the establishment of agricultural districts to preserve agricultural land, to exempt land in those districts from the collection of specified utility assessments, to provide other benefits for land in those districts, to forbid township and county zoning from restricting certain farm markets, and to provide a right to farm by exempting generally accepted agricultural practices from air pollution laws and certain nuisance statutes, rules, and ordinances.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 303.21, 519.21, 1525.11, 1525.12, 1525.13, 3704.01, 3767.13, and 4906.10 be amended and sections 929.01, 929.02, 929.03, 929.04, 929.05, and 6111.034 of the Revised Code be enacted to read as follows:

Sec. 303.21. Sections 303.01 to 303.25 of the Revised Code do not confer any power on any board of county commissioners or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, and no zoning certificate shall be required for any such building or structure.

SUCH SECTIONS CONFER NO POWER ON ANY BOARD OF COUNTY COMMISSIONERS, COUNTY RURAL ZONING COMMISSION, OR BOARD OF ZONING APPEALS TO PRO-

HIBIT IN A DISTRICT ZONED FOR AGRICULTURAL, INDUSTRIAL, RESIDENTIAL, OR COMMERCIAL USES, THE USE OF ANY LAND FOR A FARM MARKET WHERE FIFTY PER CENT OR MORE OF THE GROSS INCOME RECEIVED FROM THE MARKET IS DERIVED FROM PRODUCE RAISED ON FARMS OWNED OR OPERATED BY THE MARKET OPERATOR IN A NORMAL CROP YEAR. HOWEVER, A BOARD OF COUNTY COMMISSIONERS, AS PROVIDED IN SECTION 303.02 OF THE REVISED CODE, MAY REGULATE SUCH FACTORS PERTAINING TO FARM MARKETS AS SIZE OF THE STRUCTURE, SIZE OF PARKING AREAS THAT MAY BE REQUIRED, SET BACK BUILDING LINES, AND EGRESS OR INGRESS, WHERE SUCH REGULATION IS NECESSARY TO PROTECT THE PUBLIC HEALTH AND SAFETY.

Such sections do not confer any power on any board of county commissioners or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad for the operation of its business.

Such sections confer no power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

Such sections do not confer any power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the use of any land owned or leased by an industrial firm for the conduct of oil or natural gas well drilling or production activities or the location of associated facilities or equipment when such oil or natural gas obtained by the industrial firm is used for the operation of its own plants.

Sec. 519.21. Sections 519.02 to 519.25 of the Revised Code confer no power on any board of township trustees or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure.

SUCH SECTIONS CONFER NO POWER ON ANY TOWNSHIP ZONING COMMISSION, BOARD OF TOWNSHIP

TRUSTEES, OR BOARD OF ZONING APPEALS TO PROHIBIT IN A DISTRICT ZONED FOR AGRICULTURAL, INDUSTRIAL, RESIDENTIAL, OR COMMERCIAL USES, THE USE OF ANY LAND FOR A FARM MARKET WHERE FIFTY PER CENT OR MORE OF THE GROSS INCOME RECEIVED FROM THE MARKET IS DERIVED FROM PRODUCE RAISED ON FARMS OWNED OR OPERATED BY THE MARKET OPERATOR IN A NORMAL CROP YEAR. HOWEVER, A BOARD OF TOWNSHIP TRUSTEES, AS PROVIDED IN SECTION 519.02 OF THE REVISED CODE, MAY REGULATE SUCH FACTORS PERTAINING TO FARM MARKETS AS SIZE OF THE STRUCTURE, SIZE OF PARKING AREAS THAT MAY BE REQUIRED, SET BACK BUILDING LINES, AND EGRESS OR INGRESS, WHERE SUCH REGULATION IS NECESSARY TO PROTECT THE PUBLIC HEALTH AND SAFETY.

Such sections confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business.

Such sections confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

Such sections do not confer any power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land owned or leased by an industrial firm for the conduct of oil or natural gas well drilling or production activities or the location of associated facilities or equipment when such oil or natural gas obtained by the industrial firm is used for the operation of its own plants.

Sec. 929.01. AS USED IN CHAPTER 929. OF THE REVISED CODE, "AGRICULTURAL PRODUCTION" MEANS COMMERCIAL APICULTURE, ANIMAL HUSBANDRY, OR POULTRY HUSBANDRY; THE PRODUCTION FOR A COMMERCIAL PURPOSE OF FIELD CROPS, TOBACCO, FRUITS, VEGETABLES, TIMBER, NURSERY STOCK, ORNAMENTAL SHRUBS, ORNAMENTAL TREES, FLOWERS, OR SOD; OR ANY COMBINATION OF SUCH HUSBANDRY OR PRODUCTION.

Sec. 929.02. (A) ANY PERSON WHO OWNS AGRICULTURAL LAND MAY FILE AN APPLICATION WITH THE

COUNTY AUDITOR TO PLACE THE LAND IN AN AGRICULTURAL DISTRICT FOR FIVE YEARS IF, DURING THE THREE CALENDAR YEARS PRIOR TO THE YEAR IN WHICH HE FILES THE APPLICATION, THE LAND HAS BEEN DEVOTED EXCLUSIVELY TO AGRICULTURAL PRODUCTION OR DEVOTED TO AND QUALIFIED FOR PAYMENTS OR OTHER COMPENSATION UNDER A LAND RETIREMENT OR CONSERVATION PROGRAM UNDER AN AGREEMENT WITH AN AGENCY OF THE FEDERAL GOVERNMENT AND IF:

(1) THE LAND TOTALS NOT LESS THAN THIRTY ACRES; OR

(2) THE ACTIVITIES CONDUCTED ON THE LAND PRODUCED AN AVERAGE YEARLY GROSS INCOME OF AT LEAST TWENTY-FIVE HUNDRED DOLLARS DURING THAT THREE-YEAR PERIOD OR THE OWNER HAS EVIDENCE OF AN ANTICIPATED GROSS INCOME OF THAT AMOUNT FROM THOSE ACTIVITIES DURING THE YEAR IN WHICH HE FILES THE APPLICATION. THE OWNER SHALL SUBMIT WITH HIS APPLICATION PROOF THAT HIS LAND MEETS THE REQUIREMENTS ESTABLISHED UNDER THIS DIVISION.

(B) IF THE LAND OF A PERSON WHO FILES AN APPLICATION UNDER DIVISION (A) OF THIS SECTION IS WITHIN A MUNICIPAL CORPORATION OR IF AN ANNEXATION PETITION THAT INCLUDES THE LAND HAS BEEN FILED WITH THE BOARD OF COUNTY COMMISSIONERS UNDER SECTION 709.03 OF THE REVISED CODE AT THE TIME OF THE FILING, THE OWNER SHALL ALSO FILE AN APPLICATION FOR INCLUSION IN AN AGRICULTURAL DISTRICT WITH THE CLERK OF THE LEGISLATIVE BODY OF THE MUNICIPAL CORPORATION. NO LATER THAN THIRTY DAYS AFTER THIS FILING, THE LEGISLATIVE BODY SHALL APPROVE, APPROVE WITH MODIFICATIONS, OR REJECT THE APPLICATION BY A MAJORITY VOTE OF ITS MEMBERS. THE CLERK SHALL NOTIFY THE OWNER AND THE COUNTY AUDITOR OF THE LEGISLATIVE BODY'S DECISION. IN REJECTING AN APPLICATION, THE LEGISLATIVE BODY SHALL DEMONSTRATE THAT PLACING THE LAND IN AN AGRICULTURAL DISTRICT WILL HAVE A SUBSTANTIAL, ADVERSE EFFECT ON THE PROVISION OF MUNICIPAL SERVICES WITHIN THE MUNICIPAL CORPORATION, EFFICIENT USE OF LAND WITHIN THE MUNICIPAL CORPORATION, THE ORDERLY GROWTH AND DEVELOPMENT OF THE MUNICIPAL CORPORATION, OR THE PUBLIC HEALTH, SAFETY, OR WELFARE.

(C) UPON RECEIPT OF AN APPLICATION AND INFORMATION FILED UNDER DIVISION (A) OF THIS SECTION AND, IN THE CASE OF LAND WITHIN A MUNICIPAL CORPORATION OR INCLUDED IN AN ANNEXATION PETITION, A NOTICE OF APPROVAL OR APPROVAL WITH MODIFICATIONS AS PROVIDED IN DIVISION (B) OF THIS SECTION, THE COUNTY AUDITOR SHALL NOTIFY THE OWNER BY CERTIFIED MAIL THAT HIS LAND IS WITHIN AN AGRICULTURAL DISTRICT AND WILL REMAIN IN THE DISTRICT FOR FIVE YEARS FROM THE DATE THAT THE NOTICE WAS MAILED UNLESS THE OWNER REMOVES THE LAND IN ACCORDANCE WITH DIVISION (D) OF THIS SECTION. THE COUNTY AUDITOR SHALL KEEP A RECORD OF ALL LAND IN HIS COUNTY THAT IS WITHIN AN AGRICULTURAL DISTRICT.

IF, AT THE END OF THE FIVE YEARS DURING WHICH HIS LAND IS IN AN AGRICULTURAL DISTRICT, AN OWNER DECIDES TO KEEP SOME OR ALL OF HIS LAND IN THE DISTRICT, HE SHALL REAPPLY FOR ADMISSION TO THE DISTRICT. THE REQUIREMENTS THAT THE LAND SHALL MEET AND THE REAPPLICATION PROCESS SHALL BE THE SAME AS THOSE REQUIRED FOR THE ORIGINAL FILING UNDER THIS SECTION. IF THE OWNER DECIDES TO REMOVE SOME OR ALL OF HIS LAND FROM THE AGRICULTURAL DISTRICT, HE SHALL NOTIFY THE COUNTY AUDITOR WHO SHALL NOTE THE REMOVAL IN HIS RECORDS. LAND THAT IS REMOVED FROM A DISTRICT AT THE END OF ITS FIVE-YEAR PERIOD SHALL NOT BE SUBJECT TO THE WITHDRAWAL PENALTY ESTABLISHED IN DIVISION (D) OF THIS SECTION.

(D) IF, AT ANY TIME IN THE FIVE YEARS DURING WHICH LAND IS IN AN AGRICULTURAL DISTRICT, THE OWNER WITHDRAWS THE LAND FROM THE DISTRICT, HE SHALL NOTIFY THE COUNTY AUDITOR OF HIS ACTION AND SHALL PAY TO THE COUNTY AUDITOR A WITHDRAWAL PENALTY CALCULATED AS FOLLOWS:

(1) IF THE OWNER'S ACTION ALSO DISQUALIFIES HIS LAND FOR ANY TAX SAVINGS THAT IT HAD BEEN RECEIVING UNDER SECTIONS 5713.30 TO 5713.38 OF THE REVISED CODE, THE OWNER SHALL PAY ONE-HALF OF THE AMOUNT CHARGED HIM UNDER SECTION 5713.34 OF THE REVISED CODE. THE WITHDRAWAL PENALTY SHALL BE IN ADDITION TO THE AMOUNT CHARGED UNDER THAT SECTION.

(2) IF THE LAND HAD NOT BEEN RECEIVING ANY TAX SAVINGS UNDER THOSE SECTIONS, OR IF THE OWNER'S ACTION DOES NOT DISQUALIFY THE LAND FOR TAX SAVINGS UNDER THEM, THE OWNER SHALL PAY AN AMOUNT EQUAL TO ONE-HALF OF THE AMOUNT THAT WOULD HAVE BEEN CHARGED HIM UNDER SECTION 5713.34 OF THE REVISED CODE IF HIS LAND HAD BEEN RECEIVING TAX SAVINGS AND BECAME DISQUALIFIED FOR THEM.

THE COUNTY AUDITOR SHALL CALCULATE THE AMOUNT OF THE WITHDRAWAL PENALTY THAT IS DUE AND SHALL NOTIFY THE OWNER OF IT. THE AUDITOR SHALL ALSO NOTE THE WITHDRAWAL IN HIS RECORDS.

THE COUNTY AUDITOR SHALL DISTRIBUTE THE MONEYS THAT HE COLLECTS UNDER THIS DIVISION IN THE MANNER PROVIDED IN SECTION 5713.35 OF THE REVISED CODE FOR MONEYS THAT HE COLLECTS UNDER THAT SECTION.

FOR THE PURPOSES OF THIS DIVISION, "WITHDRAWAL FROM AN AGRICULTURAL DISTRICT" INCLUDES EXPLICIT REMOVAL OF LAND FROM A DISTRICT, CONVERSION OF LAND TO NONAGRICULTURAL USE, AND WITHDRAWAL OF LAND FROM A LAND RETIREMENT OR CONSERVATION PROGRAM AND USE OF THAT LAND FOR NONAGRICULTURAL PURPOSES.

(E) LAND THAT IS INCLUDED IN AN AGRICULTURAL DISTRICT UNDER THIS SECTION AND THAT IS SUBSEQUENTLY ANNEXED BY A MUNICIPAL CORPORATION SHALL NOT BE SUBJECT TO DIVISION (B) OF THIS SECTION EITHER AT THE TIME OF ANNEXATION OR AT THE TIME OF ANY SUBSEQUENT REAPPLICATION FOR INCLUSION IN THE DISTRICT IF, AT THE TIME OF ANNEXATION, ITS OWNER DID NOT SIGN A PETITION FAVORING ANNEXATION UNDER SECTION 709.02 OF THE REVISED CODE OR VOTE FOR ANNEXATION IN AN ELECTION HELD IN ACCORDANCE WITH SECTION 709.17 OF THE REVISED CODE. IF ITS OWNER DID SIGN A PETITION FAVORING ANNEXATION OR VOTE FOR ANNEXATION, AS PROVIDED IN THOSE SECTIONS, OR IF THE OWNER WHO OPPOSED ANNEXATION HAS SOLD OR TRANSFERRED THE LAND TO ANOTHER PERSON WHO IS KEEPING THE LAND IN THE AGRICULTURAL DISTRICT, THE LAND SHALL BE SUBJECT TO DIVISION (B) OF THIS SECTION AT THE TIME OF ANY SUBSEQUENT REAPPLICATION FOR INCLUSION IN THE DISTRICT.

(F) THE DIRECTOR OF AGRICULTURE SHALL PRESCRIBE THE APPLICATION FORMS REQUIRED UNDER THIS SECTION AND SHALL FURNISH THEM TO COUNTY AUDITORS. IN PRESCRIBING THE FORMS, HE SHALL CONSULT WITH THE COMMISSIONER OF TAX EQUALIZATION TO DETERMINE IF A SINGLE FORM CAN BE DEVELOPED FOR THE PURPOSES OF THIS SECTION AND SECTION 5713.31 OF THE REVISED CODE.

Sec. 929.03. (A) NO PUBLIC ENTITY WITH AUTHORITY TO LEVY SPECIAL ASSESSMENTS ON REAL PROPERTY SHALL COLLECT AN ASSESSMENT FOR PURPOSES OF SEWER, WATER, OR ELECTRICAL SERVICE ON REAL PROPERTY THAT IS USED PRIMARILY FOR AGRICULTURAL PRODUCTION AND IS WITHIN AN AGRICULTURAL DISTRICT, EXCEPT THAT ANY ASSESSMENT MAY BE COLLECTED ON A LOT SURROUNDING A DWELLING OR OTHER NONAGRICULTURAL STRUCTURE THAT DOES NOT EXCEED ONE ACRE OR THE MINIMUM AREA REQUIRED BY LOCAL ZONING OR SUBDIVISION RULES, WHICHEVER IS THE GREATER AREA.

(B) IN THE CASE OF A COUNTY PROJECT CONSTRUCTED UNDER CHAPTER 6103. OR 6117. OF THE REVISED CODE, WITHIN FIVE DAYS AFTER THE HEARING PROVIDED FOR IN SECTION 6103.05 OR 6117.06 OF THE REVISED CODE, THE OWNER OF REAL PROPERTY DESIRING TO BE EXEMPT FROM COLLECTION OF THE ASSESSMENT SHALL FILE WITH THE BOARD OF COUNTY COMMISSIONERS:

(1) EVIDENCE THAT THE REAL PROPERTY IS IN AN AGRICULTURAL DISTRICT;

(2) A DESCRIPTION OF THE PRESENT USE OF THE PROPERTY;

(3) A STATEMENT OF THE ESTIMATED MARKET VALUE OF THE LAND AND ANY IMPROVEMENTS ON IT;

(4) THE REASONS WHY THE ASSESSMENT OR PORTION OF IT SHOULD NOT BE COLLECTED;

(5) A STATEMENT CERTIFYING THAT AT THE TIME OF WITHDRAWAL OF ANY OF THE LAND FROM AN AGRICULTURAL DISTRICT OR CONVERSION OF ANY OF IT TO NONAGRICULTURAL USE, THE AMOUNT OF THAT ASSESSMENT ON ALL LAND OWNED PLUS THE INTEREST SPECIFIED UNDER DIVISION (D) OF THIS SECTION IS IMMEDIATELY DUE UNLESS OTHERWISE PROVIDED BY A BOARD OF COUNTY COMMISSIONERS IN ACCORDANCE WITH THAT DIVISION.

(C) FOR EACH SPECIAL ASSESSMENT LEVIED BY A PUBLIC ENTITY ON REAL PROPERTY WITHIN AN AGRICULTURAL DISTRICT FOR PURPOSES OF SEWER, WATER, OR ELECTRICAL SERVICE, THE COUNTY AUDITOR SHALL MAKE AND MAINTAIN A LIST SHOWING:

(1) THE NAME OF THE OWNER OF EACH PARCEL OF LAND THAT IS EXEMPT FROM THE COLLECTION OF THE SPECIAL ASSESSMENT UNDER THIS SECTION;

(2) A DESCRIPTION OF THE LAND;

(3) THE PURPOSE OF THE SPECIAL ASSESSMENT;

(4) THE DOLLAR AMOUNT THAT THE OWNER WOULD HAVE HAD TO PAY IF HIS LAND HAD NOT BEEN EXEMPT AT THE TIME OF THE LEVYING OF THE SPECIAL ASSESSMENT.

IN THE CASE OF A COUNTY PROJECT CONSTRUCTED UNDER CHAPTER 6103. OR 6117. OF THE REVISED CODE, THE COUNTY AUDITOR MAY USE A LIST PROVIDED FOR IN THOSE CHAPTERS IN LIEU OF THE LIST REQUIRED BY THIS DIVISION. THE AUDITOR SHALL ALSO RECORD IN THE WATER WORKS RECORD REQUIRED BY SECTION 6103.16 OF THE REVISED CODE OR THE SEWER IMPROVEMENT RECORD REQUIRED BY SECTION 6117.33 OF THE REVISED CODE THOSE ASSESSMENTS NOT COLLECTED UNDER THIS SECTION. THE RECORDING OF THE ASSESSMENTS DOES NOT PERMIT THE COLLECTION OF THE ASSESSMENTS UNTIL SUCH TIME AS EXEMPT LANDS ARE WITHDRAWN FROM AGRICULTURAL DISTRICTS OR CONVERTED TO NONAGRICULTURAL USE.

(D) IF AT ANY TIME ANY OF THE OWNER'S EXEMPT LAND, OTHER THAN A LOT SOLD OR TRANSFERRED TO A SON, DAUGHTER, BROTHER, SISTER, MOTHER, OR FATHER FOR THE PURPOSE OF CONSTRUCTING A DWELLING IN WHICH THE RELATIVE WILL RESIDE FOR AT LEAST THREE YEARS, IS REMOVED FROM AN AGRICULTURAL DISTRICT OR CONVERTED TO NONAGRICULTURAL USE, OR IF THE OWNER OF THE EXEMPT LAND USES ON THAT LAND THE SERVICE FOR WHICH THE SPECIAL ASSESSMENT WAS ASSESSED, THE PUBLIC ENTITY MAY COLLECT THE ASSESSED AMOUNT ON ALL OF THE OWNER'S LAND EXEMPTED FROM THAT ASSESSMENT, EXCEPT AS OTHERWISE PROVIDED IN THIS DIVISION, IN A DOLLAR AMOUNT EQUAL TO THE AMOUNT OF THE ASSESSMENT ON THE LAND AS RECORDED BY THE COUNTY AUDITOR PLUS AN AMOUNT EQUAL TO THE RATE OF INTEREST THAT ANY BONDS OR NOTES ISSUED FOR THE PROJECT FOR WHICH THE ASSESS-

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IF THE OWNER OF EXEMPT LAND SELLS OR TRANSFERS A LOT TO HIS SON, DAUGHTER, BROTHER, SISTER, MOTHER, OR FATHER FOR THE PURPOSE OF CONSTRUCTING A DWELLING IN WHICH THE RELATIVE WILL RESIDE FOR AT LEAST THREE YEARS, AND IF HE OR THE BUYER OF THE LOT USES THE SERVICE FOR WHICH THE SPECIAL ASSESSMENT WAS ASSESSED ONLY TO PROVIDE SERVICE TO THAT LOT, THE OWNER OF THE LOT SHALL PAY ONLY THAT PORTION OF THE DEFERRED ASSESSMENT AND INTEREST THAT APPLIES TO THE LOT.

IF AT ANY TIME ANY PART OF AN OWNER'S EXEMPT LAND IS CONVERTED TO A PUBLIC USE AS A RESULT OF ANY ACTIONS TAKEN UNDER CHAPTER 163. OF THE REVISED CODE, THE OWNER SHALL PAY ONLY THAT PORTION OF THE DEFERRED ASSESSMENT AND INTEREST THAT APPLIES TO THE CONVERTED PARCEL OF LAND.

IN LIEU OF IMMEDIATE PAYMENT OF THE DEFERRED ASSESSMENT AND INTEREST, THE BOARD OF COUNTY COMMISSIONERS, LEGISLATIVE AUTHORITY OF A MUNICIPAL CORPORATION, OR OTHER GOVERNING BOARD OF ANY OTHER PUBLIC ENTITY MAY, UPON THE REQUEST OF THE OWNER, ESTABLISH AN EXTENDED REPAYMENT SCHEDULE FOR THE OWNER. IF THE BOARD, LEGISLATIVE AUTHORITY, OR OTHER GOVERNING BOARD ESTABLISHES SUCH A SCHEDULE, IT SHALL NOTIFY THE COUNTY AUDITOR OF THE SCHEDULE.

(E) A BOARD OF COUNTY COMMISSIONERS, LEGISLATIVE AUTHORITY OF A MUNICIPAL CORPORATION, OR OTHER GOVERNING BOARD OF ANY OTHER PUBLIC ENTITY MAY APPLY TO THE WATER AND SEWER COMMISSION, CREATED BY DIVISION (B) OF SECTION 1525.11 OF THE REVISED CODE, FOR AN ADVANCE OF MONEYS FROM THE WATER AND SEWER SPECIAL ACCOUNT, CREATED BY DIVISION (A) OF SECTION 1525.11 OF THE REVISED CODE, IN AN AMOUNT EQUAL TO THAT PORTION OF THE COSTS OF A WATER OR SEWER IMPROVEMENT AUTHORIZED BY LAW THAT IS TO BE FINANCED BY ASSESSMENTS WHOSE COLLECTION IS EXEMPT UNDER DIVISION (A) OF THIS SECTION. THE APPLICATION FOR SUCH AN ADVANCE OF MONEYS SHALL BE MADE IN THE MANNER PRESCRIBED BY RULES OF THE COMMISSION. UPON COLLECTION OF ANY ASSESSMENT WHOSE COLLECTION IS EXEMPT UNDER DIVISION (A) OF THIS SECTION, THE BOARD OF COUNTY COMMISSIONERS, LEGISLATIVE AUTHORITY, OR OTHER GOVERNING BOARD SHALL REPAY THE COMMISSION THE AMOUNT OF ANY MONEYS ADVANCED BY IT IN REGARD TO THE ASSESSMENTS.

Sec. 929.04. IN A CIVIL ACTION FOR NUISANCES INVOLVING AGRICULTURAL ACTIVITIES, IT IS A COMPLETE DEFENSE IF THE AGRICULTURAL ACTIVITIES:

(A) WERE CONDUCTED WITHIN AN AGRICULTURAL DISTRICT;

(B) WERE ESTABLISHED PRIOR TO THE PLAINTIFF'S ACTIVITIES OR INTEREST ON WHICH THE ACTION IS BASED IF THE PLAINTIFF WAS NOT INVOLVED IN AGRICULTURAL PRODUCTION; AND

(C) WERE NOT IN CONFLICT WITH FEDERAL, STATE, AND LOCAL LAWS AND RULES.

THE PLAINTIFF MAY OFFER PROOF OF A VIOLATION INDEPENDENTLY OF PROOF OF A VIOLATION OR CONVICTION BY ANY PUBLIC OFFICIAL.

Sec. 929.05. (A) NO PUBLIC OR PRIVATE AGENCY, AS DEFINED IN SECTION 163.01 OF THE REVISED CODE, SHALL APPROPRIATE MORE THAN TEN ACRES OR TEN PER CENT OF AN INDIVIDUAL PROPERTY UNDER ONE OWNERSHIP AND CURRENTLY USED IN AGRICULTURAL PRODUCTION IN AN AGRICULTURAL DISTRICT, WHICHEVER IS GREATER, EXCEPT AS PROVIDED IN THIS SECTION. NO STATE AGENCY, MUNICIPAL CORPORATION, COUNTY, TOWNSHIP, OR OTHER POLITICAL SUBDIVISION OR TAXING AUTHORITY, OR ANY OTHER PUBLIC

ENTITY, AND NO PERSON SHALL ADVANCE A GRANT, LOAN, INTEREST SUBSIDY, OR OTHER DISTRIBUTION OF PUBLIC FUNDS WITHIN AN AGRICULTURAL DISTRICT FOR THE CONSTRUCTION OF HOUSING, OR COMMERCIAL OR INDUSTRIAL FACILITIES TO SERVE NONAGRICULTURAL USES OF LAND, EXCEPT AS PROVIDED IN THIS SECTION.

(B) A PUBLIC OR PRIVATE AGENCY DESIRING TO APPROPRIATE LAND IN AN AGRICULTURAL DISTRICT AND A PUBLIC ENTITY OR PERSON DESIRING TO MAKE A DISTRIBUTION OF PUBLIC FUNDS AS PROVIDED IN DIVISION (A) OF THIS SECTION SHALL, NOT FEWER THAN THIRTY DAYS BEFORE COMMENCING PROCEEDINGS OR TAKING THE ACTION, GIVE WRITTEN NOTICE OF THE INTENT TO THE DEPARTMENT OF AGRICULTURE UNLESS THE AGENCY, PUBLIC ENTITY, OR PERSON HAS RECEIVED THE APPROVAL OF AN ENVIRONMENTAL DOCUMENT THAT INCLUDES CONSIDERATION OF THE IMPACT ON AGRICULTURAL LAND FROM AN APPROPRIATE FEDERAL AGENCY AND THE DEPARTMENT OF AGRICULTURE IS LISTED AMONG THE AGENCIES FOR COORDINATION OF THE DOCUMENT. THE NOTICE SHALL BE ACCOMPANIED BY A REPORT JUSTIFYING THE PROPOSED ACTION, INCLUDING AN EVALUATION OF ALTERNATIVES THAT WOULD NOT REQUIRE THE ACTION WITHIN THE AGRICULTURAL DISTRICT. THE DEPARTMENT SHALL REVIEW THE PROPOSED ACTION TO DETERMINE ITS EFFECT ON AGRICULTURAL PRODUCTION IN THE DISTRICT AND ON THE POLICIES, PLANS, OBJECTIVES, AND PROGRAMS OF OTHER STATE OR LOCAL GOVERNMENT AGENCIES. AFTER CONSIDERING THE NEED FOR THE PROPOSED ACTION AND ITS NECESSITY TO PROTECT, PROMOTE, OR ENHANCE THE PUBLIC HEALTH, SAFETY, PEACE, OR WELFARE OF SOME OR ALL INHABITANTS OF THE STATE, IF THE DIRECTOR OF AGRICULTURE HAS REASON TO BELIEVE THAT THE PROPOSED ACTION WOULD HAVE AN UNREASONABLY ADVERSE EFFECT ON THE DISTRICT OR ON THE POLICIES, PLANS, OBJECTIVES, OR PROGRAMS THAT WOULD OUTWEIGH THE PROTECTION, PROMOTION, OR ENHANCEMENT OF THE PUBLIC HEALTH, SAFETY, PEACE, OR WELFARE, HE SHALL INFORM THE GOVERNOR WITHIN THIRTY DAYS AFTER HAVING RECEIVED THE WRITTEN NOTICE. THE GOVERNOR SHALL ISSUE AN ORDER THAT THE PROPOSED ACTION SHALL NOT BE TAKEN FOR SIXTY DAYS. DUR-

ING THE SIXTY-DAY PERIOD THE DIRECTOR SHALL IMMEDIATELY PUBLISH, IN A NEWSPAPER OF GENERAL CIRCULATION IN THE DISTRICT, ONE NOTICE OF A PUBLIC HEARING TO BE HELD ON THE MATTER AT A CONVENIENT LOCATION IN OR AS NEAR AS POSSIBLE TO THE DISTRICT ON A SPECIFIED DATE FROM TWENTY TO THIRTY DAYS AFTER PUBLICATION OF THE NOTICE AND SEND PERSONAL NOTICE BY CERTIFIED MAIL TO ANY MUNICIPAL CORPORATION WHOSE TERRITORY INCLUDES ANY PART OF THE DISTRICT AND TO ANY PUBLIC OR PRIVATE AGENCY, PUBLIC ENTITY, OR PERSON SEEKING TO APPROPRIATE THE LAND OR MAKE THE DISTRIBUTION OF FUNDS. AFTER THE HEARING AND BEFORE THE END OF THE SIXTY-DAY PERIOD, THE DIRECTOR SHALL MAKE FINAL FINDINGS AND RECOMMENDATIONS IN THE MATTER IN WRITING AND DELIVER COPIES OF THE FINDINGS AND RECOMMENDATIONS TO THE AGENCY, ENTITY, OR PERSON SEEKING TO APPROPRIATE THE LAND OR MAKE THE DISTRIBUTION, TO ANY PUBLIC AGENCY HAVING AUTHORITY TO REVIEW OR APPROVE THE APPROPRIATION OR DISTRIBUTION, AND BY PUBLICATION IN A MANNER CONDUCIVE TO THE WIDE DISSEMINATION OF THE FINDINGS AND RECOMMENDATIONS TO THE PUBLIC. A PUBLIC AGENCY HAVING AUTHORITY TO REVIEW OR APPROVE THE APPROPRIATION OR DISTRIBUTION SHALL USE THE FINDINGS AND RECOMMENDATIONS TO REACH ITS FINAL DETERMINATION.

(C) THE DIRECTOR OF AGRICULTURE MAY INSTITUTE A CIVIL ACTION TO ENJOIN ANY PROHIBITED APPROPRIATION WITHIN AN AGRICULTURAL DISTRICT UNTIL THE DEPARTMENT MAKES ITS FINAL FINDINGS AND RECOMMENDATIONS UNDER DIVISION (B) OF THIS SECTION. IT IS NOT NECESSARY TO THE GRANTING OF SUCH AN INJUNCTION THAT THE DIRECTOR PROVE THAT THE INJURY THREATENED IS IRREPARABLE.

(D) THIS SECTION DOES NOT APPLY TO ANY LINES OR OTHER FACILITIES USED TO TRANSMIT OR DISTRIBUTE ELECTRICITY, TO ANY GAS OR OIL PIPELINE OR OTHER FACILITIES USED FOR EXPLORATION, PRODUCTION, STORAGE, TRANSMISSION, OR DISTRIBUTION OF NATURAL GAS, SYNTHETIC GAS, OR OIL, TO ANY TELEPHONE LINES, OR TO ANY ACTIVITY OR FACILITY UNDER THE JURISDICTION OF THE OHIO POWER SITING BOARD.

(E) THIS SECTION DOES NOT APPLY TO ANY EMERGENCY PROJECT IMMEDIATELY NECESSARY FOR THE PRESERVATION OF THE PUBLIC HEALTH, SAFETY, OR GENERAL WELFARE.

(F) THIS SECTION DOES NOT APPLY TO A LOT IN AN AGRICULTURAL DISTRICT THAT THE OWNER SELLS OR TRANSFER TO HIS SON, DAUGHTER, BROTHER, SISTER, MOTHER, OR FATHER FOR THE PURPOSE OF CONSTRUCTING A DWELLING IN WHICH THE RELATIVE WILL RESIDE FOR AT LEAST THREE YEARS.

Sec. 1525.11. (A) The water and sewer special account is hereby created in the state special revenue fund to consist of moneys appropriated to the special account by the general assembly, moneys repaid to the special account for advances made from it, and interest paid for delay in repayment of advances from the special account. The special account shall be administered by the water and sewer commission created by division (B) of this section. Moneys in the special account shall be used solely for advances to boards of county commissioners, LEGISLATIVE AUTHORITIES OF MUNICIPAL CORPORATIONS, AND OTHER GOVERNING BOARDS OF ANY OTHER PUBLIC ENTITIES to meet that portion of the cost of the extension of water and sewer lines ~~which is~~ to be financed by assessments whose collections are deferred OR EXEMPT pursuant to division (B) of section 6103.052 ~~of the Revised Code or~~, division (B) of section 6117.062, OR DIVISION (A) OF SECTION 929.03 of the Revised Code.

(B) There is hereby created the water and sewer commission. The commission shall consist of seven members and, for administrative purposes, shall be attached to the department of economic and community development. The members of the commission shall be the director of economic and community development or his representative, the director of health or his representative, the director of agriculture or his representative, the director of natural resources or his representative, and three members appointed by the governor. One of the three members appointed by the governor shall be a representative of industry, one shall be a farmer whose major source of income ~~must be~~ IS derived from farming, and one shall be a representative of the public. The governor shall appoint one member to serve for a term of one year, one member to serve for a term of two years, and one member to serve for a term of three years. Thereafter, terms of office of members appointed by the governor shall be for three years, commencing on the twentieth day of December and ending on the nineteenth day of December. Each appointed member shall hold office from the date of his

appointment until the end of the term for which he was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any appointed member shall continue in office subsequent to the expiration date of his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. The governor shall designate the chairman of the commission who shall serve for a term of one year. The members of the commission shall receive no compensation other than for expenses incurred in the performance of their duties.

(C) The water and sewer commission shall submit orders, made pursuant to division (C) of section 1525.12 of the Revised Code, approving advances from the water and sewer special account, to the controlling board created by section 127.12 of the Revised Code. The controlling board shall then determine whether or not such advance shall be made. If the board determines that the advance shall be made, it shall certify such action to the auditor of state who shall thereupon draw his voucher to the treasurer of state upon moneys available in the water and sewer special account for the payment of the amount certified to the board of county commissioners, LEGISLATIVE AUTHORITY, OR OTHER GOVERNING BOARD requesting the advance.

Sec. 1525.12. The water and sewer commission shall in the administration of the water and sewer special account:

(A) Consider applications for advances from the water and sewer special account made pursuant to DIVISION (E) OF SECTION **929.03** OR division (A) of section 6103.052 or OF SECTION 6117.062 of the Revised Code;

(B) Determine, pursuant to the standards set forth in section 1525.13 of the Revised Code, whether or not an advance of moneys should be made as requested by application, approve the amount of the advance, if any, to be made, and fix the maximum time within which the advance shall be repaid;

(C) Submit orders approving advances to the controlling board for action pursuant to division (C) of section 1525.11 of the Revised Code;

(D) Promulgate pursuant to Chapter 119. of the Revised Code:

(1) ~~Regulations~~ RULES prescribing the form of application for advances from the water and sewer special account and the time and manner of submitting such application;

(2) ~~Regulations~~ RULES prescribing the criteria to determine the occurrence of a change in the use of property as referred to in DIVISION (D) OF SECTION 929.03 OR division (C) of BOTH sections 6103.052 and 6117.062 of the Revised Code;

(3) ~~Regulations~~ RULES prescribing standards for the use of boards of county commissioners in determining the disposition of requests for deferment of collection of assessment pursuant to division (B) of BOTH sections 6103.052 and 6117.062 of the Revised Code;

(E) Investigate, from time to time, the uses of those lands on which the deferred OR EXEMPTED collection of assessments has been the basis for advances of moneys from the water and sewer special account, ~~and~~ require the boards of county commissioners to repay the commission , pursuant to division (B) of section 6103.052 or OF SECTION 6117.062 of the Revised Code , the advances due as a result of changes in the use of property, AND REQUIRE BOARDS OF COUNTY COMMISSIONERS, LEGISLATIVE AUTHORITIES OF MUNICIPAL CORPORATIONS, AND OTHER GOVERNING BOARDS OF ANY OTHER PUBLIC ENTITIES TO REPAY THE COMMISSION UNDER DIVISION (E) OF SECTION 929.03 OF THE REVISED CODE;

(F) Pay into the water and sewer special account all repayments of moneys advanced from ~~such fund~~ THE SPECIAL ACCOUNT and interest paid for delay in repayment of advances made from the special account;

(G) Employ such personnel as is required to administer this section.

Sec. 1525.13. (A) The water and sewer commission in determining, pursuant to division (B) of section 1525.12 of the Revised Code, the disposition of requests for advances of moneys from the water and sewer special account shall use the moneys in such special account to provide water and sewer facilities to aid in the establishment of new industrial plants, or the expansion of existing industrial plants, or such other industrial development as may be defined by the commission without undue financial burden upon open lands over or along which the lines for such facilities are extended, and shall give consideration to the following:

(1) The value and extent of the industrial development to be assisted by the improvement;

(2) The relative difficulty of financing the improvement entirely by means other than the advanced moneys;

(3) The portion of the total cost of the improvement to be financed by advanced moneys;

(4) The time in which the advanced moneys could be expected to be repaid and be made available for use in other improvements.

(B) The commission, in determining the disposition of such requests, may also use the moneys in such special account to

provide water and sewer facilities to aid in the establishment of commercial and residential developments without undue financial burden upon open lands over or along which the lines for such facilities are extended, provided that advances under division (A) of this section shall have priority over advances under this division. In determining the disposition of such requests the commission shall give consideration to divisions (A)(2), (3), and (4) of this section.

(C) THE COMMISSION MAY ALSO PROVIDE ADVANCES FOR ASSESSMENTS NOT COLLECTED UNDER SECTION 929.03 OF THE REVISED CODE. REQUESTS MADE BY A BOARD OF COUNTY COMMISSIONERS, LEGISLATIVE AUTHORITY OF A MUNICIPAL CORPORATION, OR OTHER GOVERNING BOARD OF ANY OTHER PUBLIC ENTITY UNDER THAT SECTION SHALL HAVE PRIORITY OVER REQUESTS SUBMITTED UNDER DIVISION (A) OR (B) OF THIS SECTION, AND THE ADVANCES SHALL BECOME PAYABLE WHEN THE ASSESSMENT IS COLLECTED BY THE BOARD OF COUNTY COMMISSIONERS, LEGISLATIVE AUTHORITY, OR OTHER GOVERNING BOARD UNDER DIVISION (D) OF SECTION 929.03 OF THE REVISED CODE.

Sec. 3704.01. As used in Chapter 3704. of the Revised Code:

(A) "Administrator" means the administrator of the United States environmental protection agency or the chief executive of any successor federal agency responsible for implementation of the federal Clean Air Act.

(B) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, vapor, or odorous substances, or any combination thereof, BUT DOES NOT MEAN EMISSIONS FROM AGRICULTURAL PRODUCTION ACTIVITIES, AS DEFINED IN SECTION 929.01 OF THE REVISED CODE, THAT ARE CONSISTENT WITH GENERALLY ACCEPTED AGRICULTURAL PRACTICES, WERE ESTABLISHED PRIOR TO ADJACENT NONAGRICULTURAL ACTIVITIES, HAVE NO SUBSTANTIAL, ADVERSE EFFECT ON THE PUBLIC HEALTH, SAFETY, OR WELFARE, AND DO NOT RESULT FROM THE NEGLIGENT OR OTHER IMPROPER OPERATIONS OF ANY SUCH AGRICULTURAL ACTIVITIES. FOR THE PURPOSES OF THIS CHAPTER, AGRICULTURAL PRODUCTION ACTIVITIES DO NOT INCLUDE THE INSTALLATION AND OPERATION OF OFF-FARM FACILITIES FOR THE STORAGE OR PROCESSING OF AGRICULTURAL PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ALFALFA DEHYDRATING FACILITIES, RENDERING PLANTS, AND FEED AND GRAIN MILLS, ELEVATORS, AND TERMINALS.

(C) "Air contaminant source" means each separate operation or activity that results or may result in the emission of any air contaminant.

(D) "Air pollution" means the presence in the ambient air of one or more air contaminants or any combination thereof in sufficient quantity and of such characteristics and duration as is or threatens to be injurious to human health or welfare, plant or animal life, or property, or as unreasonably interferes with the comfortable enjoyment of life or property.

(E) "Ambient air" means that portion of the atmosphere outside of buildings and other enclosures, stacks, or ducts that surrounds human, plant, or animal life, or property.

(F) "Emit" or "emission" means the release into the ambient air of an air contaminant.

(G) "Emission limitation" and "emission standard" mean a requirement that limits the quantity, rate, or concentration of emissions of air contaminants, including any requirement relating to the operation or maintenance of an air contaminant source.

(H) "Federal Clean Air Act" means "Air Quality Act of 1967," 81 Stat. 485, 42 U.S.C. 1857, as amended by "Clean Air Act Amendments of 1970," 84 Stat. 1676, 42 U.S.C. 1857, "Act of November 18, 1971," 85 Stat. 464, 42 U.S.C. 1857, "Act of April 9, 1973," 87 Stat. 11, 42 U.S.C. 1857, "Act of June 24, 1974," 88 Stat. 248, 42 U.S.C. 1857, "Clean Air Act Amendments of 1977," 91 Stat. 685, 42 U.S.C. 7401, "Safe Drinking Water Act Amendments of 1977," 91 Stat. 1393, 42 U.S.C. 7401, and any other amendments that have been or may hereafter be adopted, or any supplements to such acts and laws of the United States that have been or may hereafter be enacted in substitution therefor, together with any regulations that have been or may hereafter be adopted by the administrator by virtue of and in accordance with such acts and laws. Reference to a particular title or section of the federal Clean Air Act includes any amendments that have been or may hereafter be enacted in substitution therefor and any regulations pertaining to the title or section that have been or may hereafter be adopted by the administrator by virtue of and in accordance with the federal Clean Air Act.

(I) "Implementation plan" means a program for the prevention and abatement of air pollution in the state that has been promulgated or approved by the administrator pursuant to the federal Clean Air Act.

(J) "Person" means the federal government or any agency thereof, the state or any agency thereof, any political subdivision or any agency thereof, or any public or private corporation,

Sec. 3767.13. (A) No person shall erect, continue, use, or maintain a building, structure, or place for the exercise of a trade, employment, or business, or for the keeping or feeding of an animal which, by occasioning noxious exhalations or noisome or offensive smells, becomes injurious to the health, comfort, or property of individuals or of the public.

(B) No person shall cause or allow offal, filth, or noisome substances to be collected or remain in any place to the damage or prejudice of others or of the public.

(C) No person shall unlawfully obstruct or impede the passage of a navigable river, harbor, or collection of water, or corrupt or render unwholesome or impure, a watercourse, stream, or water, or unlawfully divert such watercourse from its natural course or state to the injury or prejudice of others.

(D) PERSONS WHO ARE ENGAGED IN AGRICULTURE-RELATED ACTIVITIES, AS "AGRICULTURE" IS DEFINED IN SECTION 519.01 OF THE REVISED CODE, AND WHO ARE CONDUCTING THOSE ACTIVITIES OUTSIDE A MUNICIPAL CORPORATION, IN ACCORDANCE WITH GENERALLY ACCEPTED AGRICULTURAL PRACTICES, AND IN SUCH A MANNER SO AS NOT TO HAVE A SUBSTANTIAL, ADVERSE EFFECT ON THE PUBLIC HEALTH, SAFETY, OR WELFARE ARE EXEMPT FROM DIVISIONS (A) AND (B) OF THIS SECTION, FROM ANY SIMILAR ORDINANCES, RESOLUTIONS, RULES, OR OTHER ENACTMENTS OF A STATE AGENCY OR POLITICAL SUBDIVISION, AND FROM ANY ORDINANCES, RESOLUTIONS, RULES, OR OTHER ENACTMENTS OF A STATE AGENCY OR POLITICAL SUBDIVISION THAT PROHIBIT EXCESSIVE NOISE.

Sec. 4906.10. (A) The power siting board shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the major utility facility as the board considers appropriate. The certificate shall be conditioned upon the facility being in compliance with standards and ~~regulations~~ RULES adopted under Chapters 3704., 3734., and 6111. of the Revised Code. The period of initial operation, under a certificate, shall expire two years after the date on which electric power is first generated by the facility. During the period of initial operation the facility shall be subject to the enforcement and monitoring powers of the director of environmental protection under Chapters 3704., 3734., and 6111. of the Revised Code and to the emergency provisions thereunder. If a major utility facility constructed in accordance with the terms and conditions of its certificate is

unable to operate in compliance with all applicable requirements of state laws, ~~regulations~~ RULES, and standards pertaining to air pollution, such facility may apply to the director of environmental protection for a conditional operating permit under division (G) of section 3704.03 of the Revised Code and the ~~regulations~~ RULES adopted thereunder. The operation of a major utility facility in compliance with such a conditional operating permit is not in violation of its certificate. After the expiration of the period of initial operation of a major utility facility, such facility shall be under the jurisdiction of the environmental protection agency, and shall comply with all laws, ~~regulations~~ RULES, and standards pertaining to air pollution, water pollution, and solid waste disposal.

The board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the board, unless it finds and determines:

(1) The basis of the need for the facility;

(2) The nature of the probable environmental impact;

(3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;

(4) In THE case of an electric transmission line, that such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems; and that such facilities will serve the interests of electric system economy and reliability;

(5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all ~~regulations~~ RULES and standards adopted thereunder;

(6) That the facility will serve the public interest, convenience, and necessity;

(7) WHAT ITS IMPACT WILL BE ON THE VIABILITY OF ANY EXISTING AGRICULTURAL DISTRICT ESTABLISHED UNDER CHAPTER 929. OF THE REVISED CODE.

(B) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification, shall have been given reasonable notice thereof.

(C) A copy of the decision and any opinion issued therewith shall be served upon each party.

Sec. 6111.034. THE DIRECTOR OF ENVIRONMENTAL PROTECTION SHALL NOT ISSUE ANY ORDER UNDER

DIVISION (H) OF SECTION 6111.03 OF THE REVISED CODE THAT WOULD REQUIRE A BOARD OF COUNTY COMMISSIONERS, LEGISLATIVE AUTHORITY OF A MUNICIPAL CORPORATION, OR OTHER GOVERNING BOARD OF ANY OTHER PUBLIC ENTITY TO LEVY AN ASSESSMENT FOR A WATER OR SEWER PROJECT UNLESS THE WATER AND SEWER COMMISSION CREATED IN DIVISION (B) OF SECTION 1525.11 OF THE REVISED CODE CERTIFIES TO THE DIRECTOR THAT SUFFICIENT FUNDS EXIST IN THE WATER AND SEWER SPECIAL ACCOUNT CREATED IN DIVISION (A) OF SECTION 1525.11 OF THE REVISED CODE TO ADVANCE MONEY TO THE AFFECTED PUBLIC ENTITY IN AN AMOUNT EQUAL TO THE TOTAL ASSESSMENT THAT IS NOT COLLECTIBLE AS A RESULT OF SECTION 929.03 OF THE REVISED CODE.

SECTION 2. That existing sections 303.21, 519.21, 1525.11, 1525.12, 1525.13, 3704.01, 3767.13, and 4906.10 of the Revised Code are hereby repealed.

SECTION 3. Notwithstanding section 929.03 of the Revised Code as enacted by this act, if a board of county commissioners, legislative authority of a municipal corporation, or other governing board of any other public entity has approved detailed plans, specifications, estimates of cost, and tentative assessments as provided in section 6103.05 or 6117.06 of the Revised Code or any other applicable section of the Revised Code concerning water, sewer, or electrical assessments prior to the effective date of this act, the board of county commissioners, legislative authority, or other governing board may collect the assessments on real property exempted by division (A) of section 929.03 of the Revised Code, as enacted by this act.

Kenneth L. Riffe Jr.

Speaker _____ *of the House of Representatives.*

Paul E. Gillmor

President _____ *of the Senate.*

Passed March 10, 1982

Approved March 30, 1982

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

David A. Johnston

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 30th day of March, A. D. 1982,

Anthony J. Celebrezze

Secretary of State.

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